FILED

95-308 AUG 23 1995

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CASE NO.:

IN THE SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER, 1995

PALM BEACH COUNTY AND
CAROL A. ROBERTS, Chair
of the Board of County
Commissioners of Palm
Beach County,

Petitioners,

v.

WEST PENINSULAR TITLE CO.,
a Florida Corporation,
ABSOLUTE, INC., a Florida
Corporation, and MARION H.
COOPER, as Personal Representative
of the Estate of Alfred R. Cooper,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether the Circuit Court erred by affirming the Final Order of the District Court which found an unconstitutional regulatory "taking" under the Fifth and Fourteenth Amendments even though fee simple ownership was contested and no final determination under the applicable state law as to the fee simple ownership interest in the subject property had been made?

2. Whether the abutting landowners to strip parcels offered for dedication under a plat, who had a competing interest in the strip parcels as a matter of law, were indispensable parties to the action for an unconstitutional "taking" under the Fifth and Fourteenth Amendments where there was no prior quiet title or declaratory judgment action?

3. Whether Respondents' claims presented a "case or controversy" as required under Article III of the U.S. Constitution sufficient to confer subject matter jurisdiction?

4. Whether Respondents had standing to assert claims for unconstitutional "taking" under the Fifth and Fourteenth Amendment where they were not, as a matter of applicable state law, the fee simple owners of the subject property?

5. Whether Respondents' claims for an unconstitutional "taking" under the Fifth and Fourteenth Amendments based upon the application of an ordinance were ripe where Respondents failed to utilize the procedure under the ordinance for obtaining an exemption from its application, or where Respondents failed to obtain an adjudication of ownership through either a quiet title or declaratory judgment action against the holders of the competing interests in the property?

6. Whether the Circuit Court erred by finding that the parties stipulated to issues of law by entering into the Pre-Trial Stipulation?

7. Whether the Circuit Court erred by affirming the District Court's denial of

Petitioner's Motion To Dismiss?

8. Whether the Circuit Court and District Court properly awarded attorney's fees and costs?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel for Petitioners, PALM BEACH COUNTY and CAROL A. ROBERTS, Chair of the Board of County Commissioners of Palm Beach County, certify the following persons have an interest in the outcome of this Appeal:

ABSOLUTE, INC., Plaintiff/Appellee/ Respondent

AMAN, JEFFREY, Trial Counsel for Plaintiff/ Appellee/Respondent

ANDREWS, JAMES, President, WEST PENINSULAR and ABSOLUTE, INC.

COMMISSIONERS of the Palm Beach County Board of County Commissioner

COOPER, MARION H., Personal Representative of the Estate of Alfred R. Cooper

Honorable EDMONDSON, J.L., Appellate Judge

Honorable G. GONZALEZ, JR., JOSE A., Trial Judge

Honorable HATCHETT, JOSEPH W., Appellate Judge

Honorable MELTON, HOWELL W., Appellate Judge

MOUNT, JOE HORN, Appellate Counsel for Defendants/Appellants/Petitioners

MEUNCH, JAMES, Trial Counsel for Plaintiff/Appellee/Respondent

O'DELL, JOAN, Appellate Counsel for Plaintiff/Appellee/Respondent

PITTS, SHARRON M., Trial Counsel for Defendants/Appellants/ Petitioners

PROPERTY OWNERS who were not joined in this suit, but who are the legal owners of the subject rights-of-way in Palm Beach Farms Plat No. 3, as the abutting landowners to the rights-of-way.

ROBERTS, CAROL. A., Defendant/Appellant/Petitioner

SMITH, WILLIAMS AND BOWLES, Law firm representing Plaintiff

VALASQUEZ, PATTI A., Appellate Counsel for Defendants/Appellants/ Petitioner

WEST PENINSULAR TITLE COMPANY, Plaintiff/Appellee/Respondent[1]

[1] Petitioner has no knowledge of any parent companies or subsidiary companies of West Peninsular Title Company and Absolute, Inc.

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REFERENCE TO REPORTS OF OPINIONS

None.

STATEMENT OF JURISDICTION

The Court has jurisdiction to review the final decision of the United States Circuit Court of Appeals for the Eleventh Circuit (the "Eleventh Circuit") pursuant to 28 U.S.C. § 1254 (1994), and Rule 10.1(a) of the Rules of the Supreme Court of the United States, and the Court should grant this Petition because the decision is in direct conflict with the decision of the Federal Circuit in Murray v. U.S. Murray v. U.S., 817 F.2d 1580 (Fed. Cir. 1987), on remand 15 Cl.Ct. 17, aff'd 864 F.2d 148, cert. denied, 103 L.Ed.2d 587, 109 S. Ct. 1318. The Court should also grant this Petition because the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings and has sanctioned the departure from the accepted and usual course of judicial proceedings by the District Court.

The Eleventh Circuit entered an Order of Judgment on January 10, 1995, which was issued

as a mandate on June 9, 1995, in case numbers 93-4104 and 93-4449, affirming the Final Order by the United States District Court For The Southern District of Florida dated December 30, 1992. The Eleventh Circuit also entered an opinion dated January 10, 1995, reported as West Peninsular Title Co. v. Palm Beach County, 41 F.3d 1490 (11th Cir. 1995) (Appendix, p 1).

A Petition For Rehearing was timely filed by the COUNTY on January 30, 1995, and the Eleventh Circuit entered an Order Denying the Petition for Rehearing on May 31, 1995.

28 U.S.C. § 1254 confers jurisdiction on the Court to review the judgment by writ of certiorari. This case involves, inter alia, claims for just compensation for a regulatory "taking" under the Fifth and Fourteenth Amendment of the United States Constitution. The District Court exercised jurisdiction over the federal claims for "taking" under the Fifth and Fourteenth Amendment pursuant to 28 U.S.C. § 1331 (1994). The Fifth Amendment provides that "No person shall...nor be deprived of

life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

The abandonment ordinance challenged by Respondents as amounting to a taking provides, in relevant part, as follows:

> Section IV. PETITIONERS.
> ... (2) Petitions for abandonment of rights of way - any person, governmental entity or business entity desiring to abandon the public's interest in and to any right of way shall be required to make application to the County pursuant to this ordinance. ...Unless initiated by the County, any petition for abandonment of rights of way shall be signed by all owners of abutting property.
>
> Section V. APPLICATION AND PRIVILEGE FEE....(2) Privilege fee - a privilege fee is hereby established, payable by any Petitioner requesting the abandonment of the interest of the County and public in and to any right of way under the jurisdiction and control of the Palm Beach County Board of County Commissioners. The privilege fee is to be used for the purpose of reimbursing the County's costs and expenses incurred when acquiring real property for public use.

> ...(6) Such privilege fee shall not apply to petitions submitted by the following:
>
> a. the fee simple owner of the property subject to an easement;
>
> b. the original gratuitous conveyor of all the public rights of way to be abandoned;...
>
> Section XI. RECORDATION OF RESOLUTION. Upon adoption of a resolution approving a petition, a certified copy of same shall be filed in the Public Records in accordance with Section 177.101 or Section 336.10, Florida Statutes, whichever is applicable.
>
> Section XII. EFFECT OF RECORDING RESOLUTION OF ABANDONMENT. (1) For County rights of way, upon the recordation of the proof of publication of notice of public hearing, proof of publication of the notice of adoption of the resolution, and a copy of the resolution in the Public Records, the interest of the right of way so closed shall be vested in accordance with provisions of Section 336.12, Florida Statutes.

Palm Beach, Fla., Ordinance 71-3 (Mar. 9, 1971), as amended, Palm Beach, Fla., Ordinance 86-18 (June 24, 1986).

The District Court exercised jurisdiction over the taking claims under the Fifth Amendment pursuant to 28 U.S.C. § 1331 (1994). It exercised pendent jurisdiction over the

state law claim for declaratory judgment as to fee simple ownership of the subject real property pursuant to 28 U.S.C. § 1337 (1994).

STATEMENT OF THE STANDARD OF REVIEW

All the issues of law raised in this Petition, including the parties respective rights to real property, are subject to plenary review by the Court. McDonald v. Hillsboro County School Board, 821 F.2d 1563 (11th Cir. 1987). In addition, "findings" which amount to conclusions of law, are subject to plenary review by the Court. Poyner v. Lear Siegler, Inc., 542 F.2d 955, 959 (6th Cir. 1976). Finally, conclusions of law based upon the pretrial stipulation are also subject to plenary review. Frost v. Davis, 346 F.2d 82 (5th Cir. 1965).

PREFACE

The Petitioners, PALM BEACH COUNTY, (the "COUNTY") and CAROL A. ROBERTS, Chair of the Board of County Commissioners of Palm Beach County ("ROBERTS") are sometimes referred to collectively herein as the "COUNTY", or the

"Petitioners". Respondents, WEST PENINSULAR TITLE CO. ("WEST PENINSULAR"), ABSOLUTE, INC. ("ABSOLUTE"), and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper ("ESTATE OF COOPER") are sometimes referred to collectively herein as the "Respondents".

STATEMENT OF THE CASE

This case involves strip parcels of land contained within a large tract of platted land, in which the strip parcels were offered for dedication to the public for road purposes. This is an appeal from a Final Order entered by the United States Court of Appeals for the Eleventh Circuit on January 10, 1995 and mandate issued on June 9, 1995, in favor of the Respondents, WEST PENINSULAR, ABSOLUTE and ESTATE OF COOPER, against the Petitioners, the COUNTY and the Commissioner. (Appendix, p 13). The Final Order entered a judgment against the COUNTY upon a finding that the COUNTY's abandonment ordinance effected a "taking" in violation of 42 U.S.C. §§ 1983 and 1985.

The abutting landowners to the strip parcels claim fee simple ownership to the strip parcels. Florida law provides a state procedure for quieting title under Chapter 65 of the Florida Statutes.[2] Florida law also provides a procedure for obtaining a declaratory judgment as to property rights under Chapter 86 of the Florida Statutes.[3]

[2]Section 65.011 provides: "Chancery courts have jurisdiction of actions by any person or corporation claiming to own any land or part thereof, or by two or more claiming to own the same land or part thereof under a common title against more than one person or corporation occupying or claiming title to the land or part thereof adversely to plaintiff, whether defendants claim or hold under a common title or not; and shall determine the title of plaintiff as against defendants and enter judgment quieting the title of, and awarding possession to, the plaintiff entitled thereto and may enter injunctions, temporary or perpetual, appoint receivers, and enter such orders about costs as are necessary to protect the rights of the parties." Section 65.011, Florida Statutes (1993).

[3]Section 86.011 of the Florida Statutes provides: "The court may render declaratory judgments on the existence, or nonexistence: (1) Of any immunity, power, privilege, or right." Section 86.011, Florida Statutes (1993). Section 86.021 provides: "Any person claiming to be interested or who may be in doubt about his rights under a deed... may have determined any question of construction or validity arising under such...deed, and obtain a declaration of rights, status, or other equitable or legal relations thereunder." Section 86.021, Florida Statutes

Prior to the Final Order of the District Court, although there were competing claims of title to the subject property, no quiet title action or declaratory judgment action had ever been commenced or decided against the competing interest holders, namely, the abutting landowners.[4]

Palm Beach Farms Company ("Palm Beach Farms") was the developer of a large tract of land located in Palm Beach County. WEST PENINSULAR is now the successor in interest to Palm Beach Farms. Palm Beach Farms had filed a plat known as the Palm Beach Farms Company

(1993).

[4]Several abutting landowners to the strip parcels have now commenced quiet title actions against West Peninsular, and all parties claiming through West Peninsular, with respect to the fee simple ownership of the strip parcels. The actions are now pending before the Circuit Court of the Fifteenth Judicial Circuit, In And For Palm Beach County, Florida, in case styled Gary Nikolits v. West Peninsular Title Co., et al, having case number CL 94-1668 AE. A copy of the Crossclaim and Third Party Complaint is attached to the Appendix at page 151. A Motion For Summary Judgment is anticipated to be filed based upon the Florida Supreme Court decision in Smith v. Horn, infra.

Plat No. 3 ("Plat No. 3") approximately 83 years ago on August 20, 1912. Plat No. 3 shows a number of strip parcels as offered for dedication for use by the public for roads, dikes and ditches. (Appendix, pp 62, 78). Plat No. 3 does not contain any express reservation of title to the rights-of-way in favor of the dedicator, Palm Beach Farms. It also does not provide a time for acceptance of the rights-of-way by the public.

After Plat No. 3 was filed, Palm Beach Farms sold substantially all of the property in Plat No. 3, including the parcels abutting the strip parcels, to various third parties prior to December 26, 1929. The deeds of conveyance do not reserve a power to revoke the dedications on Plat No. 3, or any reversion, or other interest in favor of Palm Beach Farms. (See Appendix, p. 63).

Boywic Farms, Inc. ("Boywic") is a fee simple owner of some of the parcels abutting the subject strip parcels, and deraigns its

title to the abutting land through a chain of title originating from Palm Beach Farms.

Much of the land located within Plat No. 3 remained rural in character for most of its history. During the approximately 83 year period of Plat No 3, members of the public and the COUNTY had accepted rights-of-way and constructed roads on rights-of-way within the plat as those rights-of-way had come into public use. Roads had been built on many of the dedicated rights-of-way. The COUNTY's interest in the unused rights-of-way was the prospective public use of the rights-of-way as they became suitable and necessary for construction of public roads.

On December 26, 1926, Palm Beach Farms gave a Quitclaim Deed to Elmer T. Anderson, quitclaiming its interest in "all lands and all interest in lands, vested or in remainder, in the state of Florida, wherever situated, owned by the party of the first part". (Appendix, p 76, 103). Respondents claim fee simple ownership to the strip parcels by virtue of a

chain of title originating from the 1926 Quitclaim Deed. (Appendix, p 76).

The Respondents have never contended nor offered any proof that they have a fee simple interest in the land abutting the strip parcels. (See generally, Appendix, pp 68-109).

On March 9, 1971, the COUNTY enacted an ordinance authorizing the COUNTY to sell its interests in easements and/or rights-of-way in exchange for a "privilege fee", which was amended June 24, 1986 (the "Ordinance"). Palm Beach, Fla., Ordinance 71-3 (Mar. 9, 1971), as amended, Palm Beach, Fla., Ordinance 86-18 (June 24, 1986).[5] Under the Ordinance, upon payment of the fee, the COUNTY would issue an "abandonment resolution" abandoning its interest in public right-of-way dedications made on or by plat, deed, or other instrument pursuant to Chapter 336 of the Florida

[5]See supra, Statement of Jurisdiction for text of the Ordinance.

Statutes. The Ordinance contained several exemptions from the privilege fee.

Although the Ordinance established a procedure for the voluntary abandonment by the COUNTY of road dedications, the Respondents never filed any Petition seeking an exemption under the Ordinance nor did they pay any privilege fee to obtain an abandonment. And although Florida recognizes inverse condemnation as a legal cause of action,[8] Respondents or their predecessors in interest did not commence an inverse condemnation action under Florida law against the COUNTY.

Instead, a Notice of Withdrawal of the platted roads, streets, and other unexercised rights (Appendix, p 79) purporting to revoke the rights-of-way dedication in Plat No. 3 (Appendix, p 79) was filed by the successor-in-

[8]Jacksonville v. Schumann, 167 So. 2d 95 (Fla. 1st DCA 1964); Jupiter Inlet Corp v. Village of Tequesta, 349 So. 2d 216, certified question answered and quashed, 371 So. 2d 663, cert. den'd, 444 U.S. 965, 62 L.Ed.2d 377, 100 S. Ct. 453 (Fla. 4th DCA 1977); Florida Power & Light Co. v. Rader, 306 So. 2d 565 (Fla. 4th DCA 1975).

interest to Palm Beach Farms on September 9, 1976.

Then on March 15, 1988, Respondents, WEST PENINSULAR, ABSOLUTE, and the ESTATE OF COOPER, filed an eight (8) count Verified Complaint against the COUNTY in federal court. Counts I through VI of the Complaint against the COUNTY sought injunctive relief and damages claiming that the COUNTY's abandonment ordinance effected a Fifth and Fourteenth Amendment taking of Plaintiff's real property in violation of 42 U.S.C. §§ 1983, and 1985, respectively (Appendix, pp 82-91). Count VII sought to impose a constructive trust under Florida common law for the taking (Appendix, p 92).

Count VIII of the Complaint sought a declaratory judgment under the Florida Declaratory Judgment Act, declaring that the Respondents owned fee simple interests to the rights-of-way and that they deraigned title from a chain of quitclaim deeds originating from the 1926 Quitclaim Deed, and further

declaring that the COUNTY had failed to accept the offer of dedication under Plat No. 3 to the rights-of-way prior to revocation of the offer of dedication. (Appendix, pp 93-97).

The Complaint alleges that WEST PENINSULAR and ABSOLUTE are the fee simple owners of certain rights-of-way for road, dike and ditch purposes shown as dedicated to the public on Plat No. 3. (Appendix, p 81). The declaratory judgment action seeking to determine fee simple ownership was only against the COUNTY. The action was against the COUNTY even though the COUNTY did not claim a competing interest in the fee simple ownership of the strip parcel (Appendix, p 80); it only claimed that the fee simple estate was burdened by easements for road rights-of-way.

None of the abutting landowners to the strip parcels were joined as parties to the declaratory judgment action seeking to determine fee simple ownership.

The COUNTY filed a Motion to Dismiss the Complaint on numerous grounds. (Appendix, p

121). The COUNTY's Motion to Dismiss raised, among other things, lack of subject matter jurisdiction, failure to join indispensable parties under Rule 19 of the Federal Rules of Civil Procedure, and failure to state a claim upon which relief may be granted. The COUNTY essentially asserted that the Respondents failed to join as indispensable parties the abutting landowners to strip parcels who are the fee simple owners of the strip parcels under Florida law. The COUNTY also asserted that the Respondents lacked standing because they were not the fee simple owners of the subject parcels under Florida law. (Appendix, p 122). The District Court reserved ruling on the County's Motion To Dismiss until after the trial. (Appendix, p 128).

The Respondents moved for partial summary judgment. The District Court granted partial summary judgment, and entered an Order finding that the strip parcels were offered for dedication to the COUNTY by virtue of the recording of the Plat No. 3, and that the

Respondents' chain of title was "true and correct". (Appendix, p 62). It also found that the 1926 Quitclaim Deed was not a revocation of the offer of dedication under Plat No. 3. (Appendix, p 62).

Prior to the trial and based upon the prior Order granting summary judgment, the parties filed a Joint Pre-trial Stipulation. (Appendix, p 130). The parties stipulated to a number of facts, including that the COUNTY did not expressly accept, either by formal resolution, discussion or reference, the offer to dedicate the strip parcels before the Notice of Withdrawal was filed. (Appendix, p 133). The parties also stipulated to the Respondents' chain of title originating from the 1926 Quitclaim Deed given by Palm Beach Farms. (Appendix, p 134).

The factual issues for trial concerned whether the COUNTY had impliedly accepted the offer to dedicate the strip parcels, whether such acceptance was within a reasonable time, and, if so, whether the acceptance was before

the Notice of Withdrawal was filed. (Appendix, p 135). The Pretrial Stipulation stated that in the event that Respondents prevailed on the jury issues, they would be entitled to the remedies requested in the complaint, and if they did not prevail on the jury issues, they would be entitled to none of the relief requested in the complaint." (Appendix, p 131). The Stipulation indicated that the issues of law raised in the pending Motion To Dismiss remained for the District Court's determination. (Appendix, p 133).

At trial, the District Court read to the jury certain facts from the Pretrial Stipulation, including that Plat No. 3 was recorded, that the recording of the Plat constituted an offer of dedication, the COUNTY did not expressly accept the offer to dedicate right-of-way, that the offer of dedication was revoked on September 9, 1976, that the Respondents are successors in interest to the Palm Beach Farms, and that the COUNTY had a duty to accept the offer of dedication within

a reasonable time and before it was revoked.

At trial, the jury, through a three (3) question verdict form, approved by the Court over the COUNTY's objection, found that the COUNTY did not accept the offer within a reasonable time. (Appendix, p 144).

After the trial, the District Court denied Petitioners' Motion To Dismiss. (Appendix, p 146). At a post-trial hearing, the COUNTY asserted the defenses raised in its Motion To Dismiss and Answer; it asserted that the District Court lacked jurisdiction because the Respondents had no standing and the claims were not ripe, and that as such there was no 'case or controversy" to confer jurisdiction. The COUNTY further asserted that the chain of title, as a matter of law, did not prove Respondents fee simple ownership in the strip parcels because title was deraigned from Quitclaim Deeds in which the original grantor had no interest in the strip parcels to convey. It also asserted that, notwithstanding the stipulation, the Court would not bound by

stipulations of law, only stipulations of fact by the parties.

The District Court entered the Final Order in favor of Respondents and against the COUNTY as to Counts I (unconstitutional taking under § 1983), Count II (permanent injunction against unconstitutional action), Count IV (declaratory relief from unconstitutional ordinance), Count VI (permanent prohibitory injunction), and Count VIII (declaratory judgment). (Appendix, p 17, 21).

The Final Order declares that Respondents are the fee simple owners of the subject strip parcels and that the COUNTY has no interest in any of the strip parcels. (Appendix, p 21). The District Court granted the declaratory relief and enjoined the enforcement of the Ordinance (Appendix, p 21); it did not award the other remedies requested in the Complaint such as damages, just compensation or a constructive trust for the abandonment proceeds. On April 13, 1993, the District Court also entered an Order awarding costs and

attorney's fees to Respondents under 42 U.S.C. § 1988 (1991) and the Pre-trial Stipulation (See Appendix, p 22).

A timely appeal was taken before the United States Court of Appeals for the Eleventh Circuit. (Appendix, p 148). On appeal, the COUNTY challenged the Final Order on the grounds that: the District Court failed to join the abutting landowners who claimed a competing ownership interest in the strip parcels as indispensable parties; the Respondents lacked standing to assert a claim for taking because they are not the fee simple owners of the strip parcels under Florida law, the abutting landowners are the fee simple owners; the Respondents' taking claim was not ripe because the Respondents did not utilize the procedure set forth in the Ordinance for abandonment of the road dedications; and the District Court lacked subject matter jurisdiction because the claims did not satisfy the "case or controversy" requirement under Article III of the U.S. Constitution due to the

lack of standing and ripeness. Finally, the COUNTY challenged the Final Order on the grounds that its stipulation to the chain of title under the Joint Pretrial Stipulation was a stipulation only to the facts of the chain of title, and not a stipulation to issues of law such as the legal effect of the chain of title. (Appellant's Initial Brief)

Boywic, as an abutting landowner to the subject strip parcels, filed a Motion For Leave To File Amicus Curiae Brief asserting its fee simple interest to the strip parcels. With leave, it filed an amicus brief asserting that as the owner of some of the strip parcels it was an indispensable party to the action.

The Eleventh Circuit affirmed the District Court's decision finding a "taking" under the Fifth and Fourteenth Amendments. In its opinion reported as West Peninsular Title Co. v. Palm Beach County, 41 F.3d 1490 (11th Cir. 1995), the Eleventh Circuit ruled that it was not an abuse of discretion for the District Court to refuse to join the abutting landowners

as indispensable parties to the action. West Peninsular Title Co. v. Palm Beach County, 41 F.3d 1490, 1492 (11th Cir. 1995) (Appendix, p 1, 9). The Circuit Court acknowledged the District Court's determination that the Respondents were the fee simple owners, but admitted that the finding did not apply to third parties and would not affect the rights of Boywic. Id. (Appendix, pp 8-9).

SUMMARY OF ARGUMENT

The Court should exercise jurisdiction and accept this Petition because the Eleventh Circuit's decision affirming the Final Order finding a "taking" under the Fifth Amendment where there was not a prior and legally proper determination of fee simple ownership to the strip parcels, is in direct conflict with the decision rendered by the Federal Circuit in Murray v. U.S., 817 F.2d 1580 (Fed. Cir. 1987). In Murray v. U.S., the Federal Circuit held that only persons possessing an ownership interest in real property at the time of a taking are entitled to just compensation under

the Federal Amendment. Id. at 1583. While in the present case, the Eleventh Circuit allowed a "taking" claim even though there are competing claims for fee simple interest to the strip parcels and there has never been a formal adjudication as to those competing claims.

The Eleventh Circuit acknowledged in its opinion this lack of a determination of rights when it stated "because the district court could only determine who, as between plaintiffs and the COUNTY, had the better claim to the strip parcels, amicus [abutting landowner] is not bound by the district court's order." West Peninsular, 41 F.3d at 1492. (Appendix, pp 8-9). Despite this lack of a determination as to fee simple ownership, the Eleventh Circuit held that persons with competing ownership interests were not indispensable parties to a claim for a "taking" under the Fifth Amendment. Id. (Appendix, p 9). It erroneously affirmed the District Court's Final Order of "taking" under the Fifth Amendment by failing to first either join the abutting landowners and adjudicate

their rights, or to require Respondents to first seek a quiet title or declaratory judgment in state court as to fee simple ownership of the property.

Although the District Court had stated in its Final Order that it determined fee simple ownership as between the parties, it did not make a true legal determination of fee simple ownership. The Eleventh Circuit expressly acknowledged that the District Court made no determination as to the rights of the abutting landowners, and further, that they were not bound by the decision. West Peninsular, 441 F.3d at 1492. (Appendix, pp 8-9). Contrary to the Eleventh Circuit's statement, if the District Court had made an actual legal determination as to Respondents' fee simple ownership interest, the abutting landowner could not have a fee simple ownership interest by definition.

The District Court should have joined the abutting landowners as indispensable parties before it made a determination of fee simple

ownership to the strip parcels. Its failure to do so results in a finding of a "taking" under the Fifth Amendment without an actual determination as to the fee simple owners under applicable law. This is in direct conflict with the decision in Murray v. U.S. and other cases cited infra.

The better practice would be to require claimants seeking to assert a "taking" under the Fifth Amendment where ownership is disputed, to first establish their ownership through the appropriate state quiet title action, and then to seek compensation through the state inverse condemnation proceedings.

In conflict with the decision in Murray v. U.S., the Respondents failed to establish that they had a property right, an essential element of a claim for "taking" under the Fifth Amendment. Respondents had no property right by virtue of its chain of title because the original grantor, Palm Beach Farms, owned no interest to convey when it gave the 1926 Quitclaim Deed under applicable Florida law.

Rather, as a matter of law, title to the middle of the strip passed to the purchasers of the abutting parcels at the time the abutting parcels were conveyed. Smith v. Horn, infra.

Since the Respondents do not own the strip parcels under Florida law, they lacked standing to assert claims for taking under the Fifth Amendment and Fourteenth Amendment. The Respondents' assertion of standing on their claim that the ordinance placed a "cloud" on their fee simple title to the strip parcels is based upon an incorrect assumption that they held fee simple title. Under Florida law, the fee simple owners of the rights-of-way offered for dedication are the abutting landowners to strip parcels. Smith v. Horn, infra. The chain of title upon which Respondents rely did not vest them with any property interest in the strip parcels because Palm Beach Farms had already conveyed its interest in the strip parcels to the purchasers of the abutting land and had no interest to convey at the time it gave the 1926 Quitclaim Deed. Since the

Respondents were not the fee simple owners, they lack standing to assert a claim for a "taking".

Finally, the Eleventh Circuit's decision to permit Respondents' claim without first requiring them to first utilize the procedure set forth in the abandonment ordinance, or seek compensation through an inverse condemnation action under Florida law, directly conflicts with the decision in Williamson.

The State of Florida has established procedures for determining title to real property,[7] but Respondents failed to seek a declaratory judgment or quiet title to establish their fee simple ownership as to the abutting landowners. The COUNTY also has an ordinance in place establishing procedure for the abandonment of claims to the public right-of-way,[8] but Respondents failed to file any

[7]Section 65.011, et seq., Florida Statutes (1993).

[8]Palm Beach, Fla., Ordinance 71-3 (Mar. 9, 1971), as amended, Palm Beach, Fla., Ordinance 86-18 (June 24, 1986).

application under the abandonment ordinance. The State of Florida also recognizes actions for inverse condemnation to obtain compensation for takings,[9] but Respondents failed to file any state inverse condemnation claim.

Since the Respondents never established their ownership interest in the strip parcels through the appropriate state court proceedings, never sought compensation under the applicable state procedures, nor sought a final regulatory decision under the ordinance to avoid the application of the ordinance, they failed to satisfy the ripeness requirements established in Williamson Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 87 L.Ed.2d 126, 105 S. Ct. 3108 (1985). The lack of ripeness is evident by the claims which are currently pending in state court by the abutting landowners to quiet title

[9]See supra note 6.

to, and dispose of Respondents' claim of ownership in the strip parcels.[10]

The quiet title actions now pending in state court against the Respondents make clear the problem with the Eleventh Circuit's decision. In the case before the Court, there has been a finding of a "taking" against the COUNTY in favor of Respondents. Yet it is very likely that in the pending state court action, the Respondents will be ultimately determined to have no interest whatsoever in the strip parcels. Allowing a claimant to assert a claim for a "taking" under the Fifth Amendment, and then dispose of competing claims later, invites the potential for conflicting obligations of governmental bodies. Under the Eleventh Circuit's decision, the COUNTY is liable to the Respondents for a "taking" even though the Respondents may have no interest in the property. It simply makes no sense to allow claimants to sue for a "taking" under the Fifth

[10]See supra note 4.

Amendment before they establish their fee simple ownership interest.

For these reasons, the Eleventh Circuit's decision directly conflicts with the Federal Circuit's holding of Murray v. U.S. that only the fee simple owner of property has a claim for just compensation as a result of a "taking" under the Fifth and Fourteenth Amendment. The Federal Circuit's decision represents the better position. By requiring a claimant to first establish its ownership interest, and where ownership is contested to determine ownership through a quiet title action, the Court will avoid the potential for creating conflicting obligations of the government.

ARGUMENT

Conflict with Federal Circuit

The Eleventh Circuit, in direct conflict with the Federal Circuit, held that a claimant need not establish its fee simple ownership to property in order to assert a claim for taking under the Fifth and Fourteenth Amendment.

West Peninsular Title Co. v. Palm Beach County, 41 F.3d 1490, 1492 (11th Cir. 1995).

The Federal Circuit has held that only persons possessing ownership interest in real property at the time of taking are entitled to receive compensation under the Fifth Amendment. Murray v. U.S. 817 F.2d 1580 (Fed. Cir. 1987). In Murray, the Federal Circuit found that the second mortgage holders who had not completed foreclosure of their mortgage at the time of the alleged taking could not state a claim for a taking of real property because they did not have an ownership interest in the property."

Other jurisdictions have also held that only persons possessing an ownership interest in real property at the time of taking are entitled to receive just compensation for a

"The Murray court distinguished between the Murrays' claim for a taking of the real property and claim for a taking of their lien interest as mortgage holders. Although the Court found that the Murrays had not stated a claim for the taking of the real property, it found that they had stated a claim for the taking of their valid lien interest. Murray, 817 F.2d at 1583-1584.

taking under the Fifth Amendment. See In re Rossi, 86 Bankr. 220 (9th Cir. 1988); U.S. v. 0125.07 Acres of Land, More or Less, Situated in Towns of Truro and Wellfleet, County of Barnstable, Commonwealth of Massachusetts, 753 F. Supp. 1039 (D. Mass. 1991); In re Kobaly, 142 Bankr. 743 (W.D. Penn. 1992); Fixel v. U.S., 26 Cl. Ct. 353 (1992); U.S. v. 726.23 Acres of Land, More or Less situated in Marion, Newton and Searcy Counties, State of Arkansas, 746 F.2d 1363 (C.A. Ark. 1984)(holder of a reversionary interest not entitled to just compensation for taking). The plaintiff must show that the plaintiff had a property right before there can be a finding of a compensable taking of private property for public use. Hunter v. U.S., 159 Ct. Cl. 356 (1962). The plaintiff must be the owner of the property in question at the time of its taking in order to assert a valid claim under the taking clause of the Fifth Amendment. Cooper v. U.S., 11 Cl. Ct. 471, rev'd on other grounds, 827 F.2d 762 (Fed. Cir. 1987) (reversed upon finding that

claimant was owner at the time of taking); see also State of Illinois v. U.S., 15 Cl. Ct. 399 (1988).

The Eleventh Circuit's decision directly conflicts with the Federal Circuit in Murray v. U.S. because it allowed someone other than the fee simple owner to assert a claim for a taking under the Fifth and Fourteenth Amendments.

Property Right

In order to have a claim for taking, a claimant must have a property right. Although the meaning of "property" is a question of federal law, it will usually derive its meaning from local law. U.S. v. Causby, 328 U.S. 256, 90 L.Ed. 1206, 66 S. Ct. 1062 (1946); Johnson v. U.S., 479 F.2d 1383 (1973). To determine what property rights a claimant may have, the federal courts look to local state law. Richmond Elks Hall Association v. Richmond Development, 561 F.2d 1327, 1330 (9th Cir. 1977). The courts will apply the state law in which the property is located. U.S. v. 125.07 Acres of Land, supra.

In the present case, applying Florida law, the Respondents did not have a fee simple interest in the strip parcels. The law as to ownership of strip parcels offered for dedication for road purposes under a plat is well settled in Florida. The Florida Supreme Court has expressly addressed this issue in Smith v. Horn.

In Smith v. Horn, the Supreme Court held that where an owner of land plats a subdivision and offers for dedication strip parcels to be used for road purposes, the owner creates an easement in the road and title to the land remains in the owner. Smith v. Horn, 70 So. 435, 436, 437 (Fla. 1915). It further held that where the owner conveys the land abutting the strip parcels, title to the land under the road passes from the grantor by virtue of the conveyance of the abutting land. The holder of title to property abutting the tract offered for dedication holds title to the middle of the tract. Burns v. McDaniel, 140 So. 314 (Fla. 1932).

The Florida Supreme Court has also ruled in both the Smith v. Horn case and the Burns v. McDaniel case that the abutting landowners hold title even if the offer to dedicate is not ultimately accepted. Smith v. Horn 70 So. at 437; Burns v. McDaniel 140 So. at 316-317, citing, Smith v. Horn. If the offer of dedication is not accepted, the abutting landowner then holds title free of the burden of the easement. Id.

The Respondents have never contended nor offered any proof that they have a fee simple interest in the subject strip parcels as abutting landowners to the strip parcels. Instead, they assert their ownership to the strip parcels based solely upon the chain of title originating from the 1926 Quitclaim Deed. However, based upon the law in Florida, Palm Beach Farms had no interest in the strip parcels to convey when it gave the 1926 Quitclaim Deed to Respondents' predecessors in interest, and the chain of title did not convey any interest in the strip parcels.

The Respondents claim that they established their property right because the COUNTY stipulated to the Respondents' fee simple ownership in the strip parcels, and therefore, satisfied the "property" element of a taking claim. However, the COUNTY did not stipulate to fee simple ownership; it only stipulated to Respondents' chain of title which was comprised of a series of quitclaim deeds.

Legal characterizations of a transaction are questions of law which are not subject to stipulation and present questions of law subject to plenary review by the appellate court. Union Planters Nat'l of Memphis v. U.S., 426 F.2d 115, cert. den'd, 400 U.S. 827, 27 L.Ed.2d 56, 91 S. Ct. 53 (6th Cir. 1970).

A quitclaim deed may only convey whatever interest the grantor has in the property. Black's Law Dictionary defines "quitclaim deed" as follows:

> A deed of conveyance operating by way of release; that is, intended to pass any title, interest or claim which the grantor may have in the premises, but not professing that

> such title is valid, nor containing any warranty or covenants for title.

BLACK'S LAW DICTIONARY 1126 (5th ed. 1979).

By stipulating to the chain of title, the COUNTY did not ipso facto stipulate to the Respondents' fee simple ownership interests. Under Florida law, when Palm Beach Farms conveyed title to the parcels abutting the strip parcels, it conveyed title to the purchasers to the middle of the strip. Smith v. Horn, 70 So. 435 (Fla. 1915). It is and always has been the COUNTY's position that since Palm Beach Farms had no interest in the strip parcels at the time it gave the 1926 Quitclaim Deed, it legally conveyed no interest.

As a matter of law, the abutting landowners are the fee simple owners of the strip parcels. Id.; Burns v. McDaniel, supra. The mere giving of a quitclaim deed by a grantor without an interest in the strip parcels to convey does not vest title in the grantee. Therefore, Respondents' chain of

title did establish that they are the fee simple owners of the property.

No Legal Determination of Fee Simple Ownership

In the present case, there was no legal determination as to fee simple ownership. The Eleventh Circuit essentially acknowledged that fee simple ownership had not been determined as to the strip parcels; although it acknowledged that the District Court found the Respondents were the fee simple owners, it stated that the determination is not binding on third parties. It stated that the finding only related to the County, and did not affect the rights of the abutting landowner. West Peninsular 41 F.3d at 1492. (Appendix, pp 8-9).

In effect, there was no legal determination by the District Court as to fee simple ownership. The fact that a trial court labels a determination as a finding does not make it so, if in reality it is a conclusion of law. Poyner v. Lear Siegler, Inc., 542 F.2d 955, 959 (6th Cir. 1976). Had the District Court made a legal determination of

Respondents' fee simple ownership, the abutting landowner would by definition be precluded from asserting a fee simple ownership. Black's Law Dictionary defines absolute title as follows:

> Absolute title. As applied to title to land, an exclusive title, or at least a title which excludes all others not compatible with it. An absolute title to land cannot exist at the same time in different persons or in different governments. See also **Fee simple.**

BLACK'S LAW DICTIONARY 1331 (5th ed. 1979). It is completely meaningless, nonsensical and contrary to basic real property law, to find that a person or entity has a fee simple interest in property as to one party but not as to others.

The District Court should have required the joinder of the abutting landowners if it wanted to make a legal determination as to fee simple ownership. Doty v. St. Mary Parrish Land Company, 598 F.2d 885 (5th Cir. 1979) and Lawrence v. Sun Oil Company, 166 F.2d 466 (5th Cir. 1948).

The Eleventh Circuit's acknowledgement that the District Court's finding of fee simple ownership did not apply to the abutting landowners who claim a fee simple ownership, was a correct statement of the applicable state law. Under Florida law, "no declaration shall prejudice the rights of persons not parties to the proceedings." Section 86.091, Florida Statutes (1993). Similarly, "no person not a party to the [quiet title] action is bound by any judgment rendered adverse to his interest." Section 65.041, Florida Statutes (1993). In order for the District Court to have made a determination as to "fee simple ownership", it must have required that all persons or entities with competing ownership interests be joined as parties. The District Court's failure to require that the abutting landowners as competing interest holders be joined as parties, renders its finding of ownership completely meaningless; how may a person own property in relation to one party but not in relation to other parties?

Failure To Join Indispensable Parties

The Eleventh Circuit so far departed from the accepted and usual course of judicial proceedings and has sanctioned the departure from the accepted and usual course of judicial proceedings by the District Court by failing to join claimants with competing interests in the property to the taking claim. It was reversible error to refuse to dismiss the Complaint for failure to join indispensable parties. See Kimball v. Florida Bar, 537 F.2d 1305, 1307 (5th Cir. 1976). The abutting landowners should have been joined as indispensable parties under Rule 19 of the Federal Rules of Civil Procedure which governs the joinder of parties.

Rule 19(a)(2) requires the joinder of each person who "claims an interest relating to the subject matter of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest. Rule 12(b) of the

Federal Rules of Civil Procedure provides for the dismissal of a Complaint for "failure to join a party under Rule 19". The absence of an indispensable party is so significant a defect that it may be raised for the first time subsequent to trial or on appeal. Kimball v. Florida Bar, 537 F.2d 1305, 1307 (5th Cir. 1976) (defense of failure to join an indispensable party is not waived by neglecting to raise it; an objection may be raised at any time even by the reviewing court on its own motion).

No Case or Controversy

The Eleventh Circuit also so far departed from the accepted and usual course of judicial proceedings and sanctioned the departure from the accepted and usual course of judicial proceedings by the District Court, by failing to require that the Respondents first establish their fee simple ownership interest. There was no "case or controversy" because the Respondents lacked standing and the claims were not ripe. Fee simple ownership should have

been established first, either by an action to quiet title or an action for declaratory judgment against the abutting landowners, so that the claims satisfied the standing and ripeness requirements under Article III of the Constitution.

Although the courts have expanded the rights of property owners over the last seventy years to allow property owners to make claims for takings where government regulations go "too far",[12] and the Court has previously set some constitutional guidelines as to the steps necessary before a claimant may assert a claim for a regulatory taking,[13] it has not resolved

[12]Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 67 L.Ed. 322, 43 S. Ct. 158 (1922); Loretta v. Teleprompter Manhattan CATV Corp, 458 U.S. 419, 73 L.Ed.2d 868, 102 S. Ct. 3164 (1982); United States v. Causby, 328 U.S. 256, 265, and n. 10, 90 L.Ed. 1206, 66 S. Ct. 1062 (1946); First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 96 L.Ed.2d 250, 107 S. Ct. 2378 (1987); Lucas v. South Carolina Coastal Council, 505 U.S. ---, 120 L.Ed.2d 798, 112 S. Ct. 2886 (1992).

[13] Williamson Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 87 L.Ed.2d 126, 105 S. Ct. 3108 (1985).

the issue of constitutional prerequisites to a "taking" claim where the ownership interest in the property is disputed. There is undoubtedly a trend toward the expansion of private property rights with respect to the government's ability to regulate an owner's use of his property. Since 1922, the Court has allowed property owners to seek compensation for regulatory "takings" when it held in Pennsylvania Coal Co. v. Mahon, that a regulation which goes "too far" may constitute a taking under the Fifth Amendment. Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 67 L.Ed. 322, 43 S. Ct. 158 (1922). The Court has ruled that regulations which require a physical invasion of an owners' property constitute a taking under the Fifth Amendment requiring just compensation. Loretta v. Teleprompter Manhattan CATV Corp, 458 U.S. 419, 73 L.Ed.2d 868, 102 S. Ct. 3164 (1982) (ordinance allowing television cable companies to install cable facilities in apartment buildings constitutes a taking). Id. at 435-

440, 73 L.Ed. 2d 868, 102 S. S. Ct. 3164; United States v. Causby, 328 U.S. 256, 265, and n. 10, 90 L.Ed. 1206, 66 S. Ct. 1062 (1946). In 1987, sixty-five years after this Court first decided that a regulation may constitute a taking, the Court held that even a temporary deprivation of a property owner's use of his property may constitute a taking under the Fifth Amendment requiring just compensation. First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 96 L.Ed.2d 250, 107 S. Ct. 2378 (1987). In 1992, the Court held that a property owner who is deprived of all economic use of his property may assert a claim for a taking even though the regulation advances a legitimate state interest. Lucas v. South Carolina Coastal Council, 505 U.S. ---, 120 L.Ed.2d 798, 112 S. Ct. 2886 (1992).

This trend toward protecting property rights against government regulation seems to be the result of the growing trend of local governments to engage in more comprehensive

land planning and regulation. The growth in population has created a greater need for planned development. As the desire and need for comprehensive land planning grows, so have the volume of claims for regulatory takings. As a result of the growing number of claims being made for "regulatory takings" under the Fifth Amendment against local governmental bodies, there is a need for an efficient and fair framework for asserting "taking" claims when competing claims to property are asserted. The Court must set forth the constitutional prerequisites for establishing a property right in "taking" cases where ownership is disputed.

The Eleventh Circuit, by failing to require the claimant to properly establish standing and ripeness, so far departed from the accepted and usual course of judicial proceedings and has sanctioned the departure from the accepted and usual course of judicial proceedings by the District Court. Article III of the U.S. Constitution requires that there be a "case or controversy" to confer jurisdiction

upon the federal courts. It requires that a claimant have standing and that the claims are ripe. In order to meet the standing and ripeness requirements, the claimant must first establish a property right before asserting a claim for taking.

Standing

When competing claims to fee simple ownership exist, the doctrine of standing requires that a claimant asserting a claim for "taking" under the Fifth and Fourteenth Amendment first establish his title by an action either to quiet title or for declaratory judgment under state law against the parties claiming a competing interest to satisfy these constitutional requirements. Moreover, principles of judicial economy and fairness dictate that claimants with doubtful claims should remove doubt as to their title under applicable state procedures before seeking compensation for a taking. It would be both unfair as well as a tremendous burden and expense upon governmental bodies to allow

claimants to first obtain compensation for a "taking" of property, and then later be adjudicated to have no interest at all.

In this instance, there are several quiet title claims now pending in Florida state court against WEST PENINSULAR and ABSOLUTE to dispose of their claims to ownership of the strip parcels.[14] It is very likely that the abutting landowners will prevail on these claims and obtain an order finding that they, not WEST PENINSULAR and ABSOLUTE, are the fee simple owners of the subject parcels. The District Court should have stayed the action until Respondents first removed the doubt concerning their title through appropriate state court actions.

For these reasons, the decision in Murray v. U.S. is better law and should be followed. It makes practical sense to require the claimant to first prove its fee simple interest

[14] Gary Nikolits v. West Peninsular Title Co., et al, in the Circuit Court of the Fifteenth Judicial Circuit, In And For Palm Beach County, Florida, Case No. CL 94-1668 AE.

in the property and remove any doubt as to his title as a prerequisite to asserting a "taking" claim under the Fifth Amendment.

Essentially, the Eleventh Circuit held that a claimant need only show is that its interest is a "better" interest than the government's interest in the property. The Eleventh Circuit expressly stated that "because the district court could only determine who, as between plaintiffs and the County, had the better claim to the strip parcels, amicus [abutting landowners] is not bound by the district court's order." West Peninsular, 41 F.3d at 1492. (Appendix, pp 8-9). It held that, therefore, it was not an abuse of discretion for the district court to refuse to join the abutting landowners as indispensable parties to the action. Id. at 1492. However, the fact that a party may not be bound by a judgment does not mean that an action may proceed without that party. Doty v. St. Mary Parrish Land Company, 598 F.2d 885 (5th Cir. 1979) (mineral lessee was indispensable parties

in suit to try title to land). In Doty, the Fifth Circuit explained policy considerations necessary to a determination of indispensable parties:

> The first factor calls for the prejudicial effect of a judgment rendered in the absence of the party who cannot be joined. This factor requires the court "to consider the extent to which the judgment may 'as a practical matter impair or impede his ability to protect' his interest in the subject matter."

Doty, 598 F.2d at 887. The court also noted that "in a subsequent suit between appellants and lessee, an unfavorable judgment in the present case would constitute precedent adverse to the lessee's claims." Id. Finally, the court in Doty noted the inadequacy of the judgment without joinder stating that "a subsequent action against the lessee could result in the inconsistent determination that the lessor's title was valid, thereby creating conflicting obligations. Id. at 888.

The Eleventh Circuit essentially ruled that a final determination of ownership was not necessary to an award for just compensation for

taking under the Fifth Amendment. To the extent that the Court did not make a legal determination of ownership, its decision conflicts with the decision of the Federal Circuit in Murray v. U.S. If all that is required of claimants to establish a "taking" under the Fifth Amendment is that they have a better interest than the government, then anyone claiming any interest may now make a claim for taking against the regulatory body.

To the extent the Eleventh Circuit's decision does not require a legal determination of fee simple ownership, it also conflicts with the standing and ripeness elements of the "case or controversy" requirement set forth in Article III of the U.S. Constitution and as interpreted by the courts. The Eleventh Circuit held that the Respondents had standing simply because they claimed an ownership interest in the strip parcels and there was a genuine dispute as to ownership. The Eleventh Circuit actually assumed ownership in order to find standing when it stated "Plaintiffs have

standing to challenge the application of the ordinance to what they assert is their property." West Peninsular Title Company, at 1492. (Appendix, p 8). But then the Court contradicts itself by then stating that the District Court could only determine the property rights as between the Respondents and the County and could not determine the property rights as to the abutting landowners. Id. (Appendix, pp 8-9). Either the District Court could determine property rights or it could not. The Eleventh Circuit admits that the District Court could not determine property rights as to third parties, the abutting landowners. To the extent the Eleventh Circuit's decision did not require a legal determination of Respondent's ownership interest in the property to establish standing and ripeness, it departed from the usual course of judicial proceedings.

Ripeness

The Eleventh Circuit's decision also conflicts with Williamson Regional Planning

Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 87 L.Ed.2d 126, 105 S. Ct. 3108 (1985). The Eleventh Circuit stated that "a 'case or controversy' exists in this case because the parties genuinely disputed ownership of the strip parcels in the district court." West Peninsular, 41 F.3d 1491. Yet the Eleventh Circuit found standing despite the undisputed fact that Respondents had not sought a claim for inverse condemnation under Florida law before bringing their "taking" claims under the Fifth Amendment.

The exercise of judicial power under the Constitution depends upon the existence of a "case or controversy." Preiser v. Newkirk, 422 U.S. 395, 45 L.Ed.2d 272, 95 S. Ct. 2330 (1975). The federal district courts lack subject matter jurisdiction if there is no "case or controversy." Powell v. McCormack, 395 U.S. 486, 23 L.Ed.2d 491, 89 S. Ct. 1944 (19). Ripeness is an element of the "case or controversy" requirement. Williamson Regional Planning Comm'n v. Hamilton Bank of Johnson

City, 473 U.S. 172, 87 L.Ed.2d 126, 105 S. Ct. 3108 (1985). The Court in Williamson held that a property owner's claim for taking was not ripe because the owner had not obtained a final administrative decision on his subdivision application and had not utilized state procedures for obtaining just compensation. Id., 473 U.S. at 196.

Contrary to the decision in Williamson, the Eleventh Circuit affirmed the District Court's exercise of jurisdiction even though the Respondents had not sought compensation through a claim for inverse condemnation under Florida law and their claims were not ripe. In doing so, the Eleventh Circuit so far departed from the accepted and usual course of judicial proceedings and has sanctioned the departure from the accepted and usual course of judicial proceedings by the District Court. The Respondents claims for "taking" under the Fifth and Fourteenth Amendment did not satisfy the ripeness element of the "case or controversy" requirement under Article III.

CONCLUSION

For all of the foregoing reasons, Petitioners, PALM BEACH COUNTY and Commissioner CAROL A. ROBERTS, respectfully request this Court accept jurisdiction over this case; reverse the decisions of Eleventh Circuit and District Court; vacate the Final Order entered December 30, 1992 in favor of Respondents and the Order awarding attorney's fees and costs; and remand this case to District Court with directions to enter an order finding that there was no taking under the Fifth Amendment, or alternatively, to remand the action for a new trial.

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CASE NO.:_____

IN THE SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 1995

PALM BEACH COUNTY AND
CAROL A. ROBERTS, Chair
of the Board of County
Commissioners of Palm
Beach County,

Petitioners,

v.

WEST PENINSULAR TITLE CO.,
a Florida Corporation,
ABSOLUTE, INC., a Florida
Corporation, and MARION H.
COOPER, as Personal Representative
of the Estate of Alfred R. Cooper,

Respondents.

PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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WEST PENINSULAR TITLE CO., Absolute, Inc., Marion H. Cooper, for Estate of Alfred R. Cooper, Plaintiffs-Appellees,

v.

PALM BEACH COUNTY, Carol A. Roberts, Chair of Board of Palm Beach County Commissioners of Palm Beach County, Defendants-Appellants.

Nos. 93-4104, 93-4449.

United States Court of Appeals, Eleventh Circuit.

Jan. 10, 1995.

Purported owners brought action challenging county's application of ordinance authorizing county to sell easement and right-of-way interests in property originally acquired through dedication. The United States District Court for the Southern District of Florida, No. 88-8111-CV-JAG, Jose A. Gonzalez, Jr., J., entered judgment for owners, and county appealed. The Court of Appeals held that: (1) owners had standing to challenge application of ordinance; (2) county failed to establish that adjoining landowners were indispensable parties; (3) due process claim

was ripe for judicial review; and (4) terms of parties' pretrial stipulation belied county's contention that it reserved right to make certain arguments after jury's fact finding.

Affirmed.

1. **Stipulations [Key] 14(10)**

In view of County's pretrial stipulation that plaintiffs were successors in interest to landowner that had attempted to dedicate land to county, plaintiffs had standing to raise claim that offer of dedication was never accepted and thus to challenge application of ordinance authorizing county to sell easement and right-of-way interests in property acquired through dedication. Palm Beach County, Fla, Ordinance No. 86-18.

2. **Federal Civil Procedure [Key] 1748**

Suit brought by successors in interest who claimed that predecessor's offer of dedication had never been accepted by county was not subject to dismissal based on successor's failure to join adjoining landowners as indispensable parties, despite county's

contention that adjoining landowners owned property in question; adjoining landowners would not be bound by district court's order, and county failed to establish nature of their allegedly unprotected interests.

3. **Federal Courts [Key] 13.25**

Purported owners' "arbitrary and capricious" due process challenge to application of ordinance authorizing county to sell easement and right-of-way interests in property that had been dedicated to county was ripe for judicial review as soon as county applied ordinance and its procedures to property that purportedly had never been accepted for dedication. U.S.C.A. Const.Amend. 14.

4. **Federal Courts [Key] 774**

In view of pretrial stipulation, pursuant to which neither party contested district court's subject matter jurisdiction, county could not claim on appeal that purported property owners' claims were frivolous and that no subject matter jurisdiction existed in case.

5. Stipulation [Key] 14(11)

In dispute over ownership of property, terms of pretrial stipulation belied county's contention that it reserved right to make certain arguments after jury's fact finding by referring to "undisposed of motions" in stipulation; parties specifically agreed that jury's conclusion would be outcome determinative of all federal and state claims, and there was no contention by county that it was unfairly duped into signing stipulation.

6. Federal Courts [Key] 763.1

Court of Appeals owes great deference to trial judge's interpretation and enforcement of pretrial stipulations.

Appeals from the United States District Court for the Southern District of Florida.

Before HATCHETT and EDMONDSON, Circuit

*Honorable Howell W. Melton, Senior U.S. District Judge for the Middle District of Florida, sitting by designation.

Judges, MELTON*, Senior District Judge.

PER CURIAM:

After a jury trial, the district court entered judgment for plaintiffs. Defendants raise several arguments, hoping mainly to void concessions made in district court in the joint pretrial stipulation. The district court is affirmed.

The controversy concerns the ownership of strip parcels (roads and ditches) offered by Palm Beach Farms for dedication to Palm Beach County in 1912. A 1976 instrument entitled "Notice of Withdrawal of Platted Roads, Streets, and Other Unexercised Rights" revoked the offer of dedication. In 1986, pursuant to local Ordinance No. 86-18 (the "Ordinance"), defendant Palm Beach County the "County"), began a practice of selling easement and right of way interests in property originally acquired through dedication. In return for a "privilege fee", the County issued an abandonment resolution, which, when recorded, transferred ownership of the parcel to the

payor of the fee. This dispute began when the County attempted to collect fees in exchange for abandonment resolutions for parcels that, according to plaintiffs, had never been accepted by the County.

Plaintiffs, claiming that they were successors in interest to Palm Beach Farms (and thus owners of the strip parcels), challenged the County's practice as an unconstitutional taking--under the Fifth and Fourteenth Amendments--of their property.[1] The County conceded that it never expressly accepted the dedication; but, at trial, the County attempted to show that it had impliedly accepted the dedication by using the strip parcels. The jury found for plaintiffs, decided that the County had not accepted the 1912 offer of dedication within a reasonable time. The

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[1]Application of the Ordinance, according to plaintiffs, put a "cloud" on plaintiffs' title because title to the strip parcels was transferred to the payor of the privilege fee. Plaintiffs' property was, in other words, not transferable so long as the County continued to demand fees for the "abandonment" of property it never owned.

district court entered judgment for plaintiffs: plaintiffs were judged the fee simple owners of the pertinent strip parcels; defendants were enjoined from applying the Ordinance to plaintiffs' property; and plaintiffs were awarded attorney's fees. Defendants appeal.

[1] The County now contests plaintiffs' standing, arguing that plaintiffs could not possibly own the strip parcels (and thus have no interest at stake). But given plaintiffs' allegations and the County's stipulations in the district court, the record supports both standing and jurisdiction. A "case or controversy" exists in this case because the parties genuinely disputed ownership of the strip parcels in the district court. The County stipulated to plaintiffs' chain of title, agreeing that plaintiffs were successors in interest to Palm Beach Farms. The controversy was thus limited to a decision about whether the offer of dedication was

accepted.[2] Plaintiffs have standing to challenge the application of the Ordinance to what they assert is their property.

[2] But the County insists that adjoining landowners own the strip parcels, citing *Murrell v. United States*, 269 F.2d 458 (5th Cir.1959), as an alternative to 16.33 Acres. This decision is not about standing: what the County is really arguing is that plaintiffs failed to join indispensable parties. Amicus Boywic Farms agrees, arguing that it was harmed by the entry of judgment in favor of plaintiffs. Because the district court could only determine who, as between plaintiffs and

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[2]"[S]tanding cannot be waived and may be asserted at any stage of litigation." Harris v. Evans 20 F.3d 1118, 1121 n. 4 (11th Cir. 1994)(enbanc). We disagree with the County's argument that plaintiffs' ownership claim is so obviously frivolous that standing could not be possibly exist regardless of stipulated facts pointing to standing. In support of this claim, the County cites the allegedly "remarkably similar" case of United States v. 16.33 Acres of Land, 342 So.2d 476 (Fla. 1977), as binding precedent denying plaintiffs' ownership claims. But 16.33 Acres is distinguishable because in that case the government expressly accepted the offer of dedication. Id. at 479.

the County, had the better claim to the strip parcels, amicus is not bound by the district court's order. It was not abuse of discretion for the district court to refuse to dismiss this case for failure to join indispensable parties. The County, as movant, had the burden "to show the nature of the unprotected interests of the absent parties." 5A Wright & Miller, Federal Practice and Procedure § 1859; yet, the County's citation to the record reveals only that it established the existence of adjoining landowners (not the nature of allegedly unprotected interests).

[3] And, plaintiffs' "arbitrary and capricious" due process claim is ripe.[3] Plaintiffs accused the County of applying an arbitrary and capricious action (asserting

[3]Because we conclude that plaintiffs' arbitrary and capricious due process claim was ripe, we say nothing whether plaintiffs' additional constitutional claims were ripe. We do note, however, that plaintiffs were not granted relief pursuant to a specific claim. Instead, the County stipulated that plaintiffs would be entitled to the remedies requested if plaintiffs prevailed on any of the disputed fact issues.

ownership to the strip parcels and recording abandonment resolutions which transferred title) to their property. Plaintiffs' claim was ripe as soon as the County applied the ordinance and the petition process (including a $400 nonrefundable application fee) to the undedicated strip parcels. See *Eide v. Sarasota County*, 908 F.2d 716, 724 n. 13 (11th Cir.1990).

[4] The County argues that no subject matter jurisdiction exists because plaintiffs' claims are so frivolous. But the course of litigation and stance of the County in district court undercuts its claim of frivolousness. We also note that the pretrial stipulation plainly reads that "[n]either party contests subject matter ... jurisdiction."[4] If the County

[4]Parties may not stipulate jurisdiction. Bush v. United States, 703 F.2d 491, 494 (11th Cir.1983). And we do not say that jurisdiction was proper because jurisdiction was stipulated. Instead, we look to the record: we affirm the district court's conclusion that the stipulated facts give rise to jurisdiction. For example, the County argues frivolousness by pointing to purported transfers--by plaintiffs' predecessors in interest--that the County says are null and void. But the County stipulated to plaintiffs' chain of title; and the County agreed that it was

actually thought plaintiffs' claims were frivolous; it should not so willingly conceded facts giving rise to jurisdiction in the stipulation. Because the district court had subject matter jurisdiction over plaintiffs' federal claims, the court did not err by including plaintiffs' state claims for declaratory relief--pendent jurisdiction was proper.

[5, 6] The County also argues that the district court erred by interpreting the stipulation as a "winner-take-all" proposition. That is, the County says it reserved a right to make several arguments, after the jury's fact finding, by referring to "undisposed of motions" in the stipulation. We disagree. The parties agreed that the jury's conclusion would "be outcome determinative of all of the federal and state claims." The County does not argue that it was unfairly duped into signing the

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undisputed that "plaintiffs' are the successors in interest to the Palm Beach Farms Company." The record was set in district court.

stipulation. And, we owe great deference to the trial judge's interpretation and enforcement of pretrial stipulations. See *Morrison v. Genuine Parts Co.*, 828 F.2d 708 (11th Cir.1987); *Hill v. Nelson*, 676 F.2d 1371, 1378 n. 8 (11th Cir.1982). In the light of the stipulations, the district court did not err when it refused to entertain the County's post-verdict motions.

Defendant raise other arguments, none of which present grounds for reversal. The district court's judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT COURT

Nos. 93-4104 and 93-4449

District Court No. 88-8111-CV

Filed
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 10 1995

MIGUEL J. CORTEZ
CLERK

WEST PENINSULAR TITLE CO.,
ABSOLUTE, INC., MARION H. COOPER,
for the Estate of Alfred R. Cooper,

Defendants-Appellants,

versus

PALM BEACH COUNTY, CAROL A. ROBERTS,
Chair of Board of County Commissioners of
Palm Beach County,

Defendants-Appellants.

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Appeals from the United States District Court
for the Southern District of Florida

- - - - - - - - - - - - - - - -

Before HATCHETT and EDMONDSON, Circuit Judges,
and MELTON*, Senior District Judge.

J U D G M E N T

These causes came to be heard on the transcript of the record from the United States

District Court for the Southern District of Florida, and were argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in these causes be and the same are hereby AFFIRMED;

It is further ordered that defendants-appellants pay to plaintiffs-appellees, the costs on appeal to be taxed by the Clerk of this Court.

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*Honorable Howell W. Melton, Senior U.S. District Judge for the Middle District of Florida, sitting by designation.

Entered: January 10, 1995
For the Court: Miguel J. Cortez, Clerk

By: /s/ Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: 6/9/95

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 93-4104 & 93-4449

D.C. Docket No. 88-8111-CV-JAG

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 31 1995

MIGUEL J. CORTEZ
CLERK

WEST PENINSULAR TITLE CO., ABSOLUTE, INC., MARION H. COOPER, for the Estate of Alfred R. Cooper,

Plaintiffs-Appellees,

versus

PALM BEACH COUNTY, CAROL A. ROBERTS, Chair of Board of County Commissioners of Palm Beach County,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Florida

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Before HATCHETT and EDMONDSON, Circuit Judges, MELTON,* Senior District Judge.

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* Honorable Howell W. Melton, Senior United States District Judge for the Middle District of Florida, sitting by designation.

O R D E R:

Appellees West Peninsular Title Co., Absolute, Inc. and Marion H. Cooper ("West Peninsular") were prevailing parties on appeal before this court. West Peninsular's Motion for Attorneys' Fees and Costs on Appeal was carried with the case. Because West Peninsular prevailed on appeal, we will award attorneys fees and costs as authorized by 42 U.S.C. § 1988. This case is remanded to the district court for a determination of the amount to be awarded.

REMANDED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PENINSULAR TITLE COMPANY, et al.,

PLAINTIFFS,

v.

CASE NO. 88-8111
CIV-GONZALEZ

PALM BEACH COUNTY, et al.,

DEFENDANTS.

DEC 30 1992

ORDER

THIS CAUSE has come before the Court upon the motion for entry of final judgment. Oral argument was heard on December 11, 1992.

A trial by jury was held in this cause on June 23-24, 1992. The issue before the jury was whether Palm Beach County accepted an offer to dedicate strip parcels originally made in 1912. The jury found that the defendants had never accepted the offer of dedication from plaintiffs' predecessor in interest. The jury never reached the questions of partial acceptance or of acceptance in a reasonable

amount of time - the jury found that the county never accepted any parcels prior to the express revocation in 1976.

At trial, the county attempted to show that it had accepted the offer of dedication by use; however, the jury's verdict indicated conclusively that the county failed to prove that it had used any of the parcels at issue in this litigation.

The parties stipulated that if the plaintiffs prevailed on any of the issues, they would be entitled to the relief sought in the complaint. This included the counts for a constructive trust and under § 1983 for a Fifth Amendment taking. The defendants now argue that the Court is not bound by the stipulation and that defendants failed to offer proof to the jury on the issue of a constitutional taking. The county also maintains that the plaintiffs "waived" any interest in parcels presently being used by the county. At oral argument, plaintiffs conceded that they are not entitled to a constructive trust, and

accordingly, that issue is no longer before the Court.

As to the issue of waiver of certain tracts being used by the county, the defendants assert that the plaintiffs waived all tracts which have been used sometime in the past. This assertion is not correct. The plaintiffs only offered to release any interest in those parcels that the county proved it was using. The county failed to show that it was using any parcels, as demonstrated by the jury's verdict. It was the County's burden to show that they had used a given tract (which would have implied acceptance of said parcel). No such showing was made. Thus, as to which tracts are involved, judgment will be entered for the plaintiffs as to all tracts claimed because the defendants failed to show that any were being used.

Importantly, the parties entered a stipulation which clearly provides that "in the event plaintiffs prevail..., they shall be entitled to the remedies requested in the

complaint." The county now argues that the stipulation is overreaching and that the plaintiffs failed to offer proof of a constitutional taking at trial. The defendants' argument is not well received. The plaintiffs did not present specific proof on the issue precisely because the stipulation was in effect. A stipulation is a contract. Kinzli v. City of Santa Cruz, 539 F.Supp. 887 (S.D.Cal. 1982). Furthermore, a stipulation should be enforced unless a manifest injustice would result. Hill v. Nelson, 676 F.2d 1371 (11th Cir. 1982). In this case, the manifest injustice would result only if the stipulation were not enforced due to plaintiffs' reliance on the stipulation at trial. Accordingly, the remedies stipulated to by the parties will be embodied in this final judgment. Moreover, the Court views the stipulation as a settlement as to those issues stipulated to in the document. Thus, it is permissible to enter the instant judgment because the county has agreed to the remedies, eliminating the need for an offer of

proof on those issues. Thus, as with any settlement, the stipulation is not an admission on the county's part that a taking occurred. It is, however, an agreement that the plaintiffs will be entitled to remedies as if a taking occurred.

The Court has reviewed the motion and the record, and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED as follows:

1) Judgment is hereby entered on behalf of plaintiffs and against defendants as to Counts I, II, IV, VI and VIII, pursuant to the stipulation entered by the parties.

2) Counts III, V and VII are moot.

3) West Peninsular Title Company is the fee simple owner of the real property described in Exhibit A.

4) Absolute, Inc. is the fee simple owner of the real property described in Exhibit B.

5) Palm Beach County has no interest in any of the property in Exhibits A & B, and is

hereby permanently prohibited from taking any action under Ordinance 86-18 in relation to said properties.

6) Pursuant to the stipulation, plaintiffs are hereby awarded attorney's fees under 42 U.S.C. § 1988. Said fees and costs will be awarded upon appropriate application to the Court.

7) In the alternative, the Court, after reviewing the entire record and pursuant to the jury's verdict, finds that Ordinance 86-18 is unconstitutional as applied to plaintiffs' property listed in Exhibits A & B. The ordinance purports to abandon property "controlled" by the county. As applied to the instant property, the ordinance constitutes a constructive taking as the county has no interest whatever in the land. The county's actions placed a cloud on plaintiffs' title to the land which necessitated the filing of the instant lawsuit to clear said title. Accordingly, in addition to the stipulation, judgment is entered pursuant to § 1983 on

behalf of plaintiffs and against defendants for the unconstitutional taking. Attorney's fees are awarded pursuant to § 1988, and will be granted upon appropriate application.

8) All other pending motions are **DENIED** as moot and this case is **CLOSED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 30th day of December, 1992.

/s/ Jose A. Gonzalez, Jr.
JOSE A. GONZALEZ, JR.
UNITED STATES DISTRICT JUDGE

cc: All counsel

Block 44 R41 T45 S12	That 30' strip lying between Tracts 5-8 and 9-12, Block 44, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 44 R41 T45 S12	That 30 strip lying between Tracts 21-24 and 25-28, Block 44, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 52 R41 T45 S24	That 30' strip lying between Tracts 7-10 and 15-18, Block 52, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 52 R41 T45 S24	That 30' strip lying between Tracts 4-45 and 5-44, Block 52, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 61 R41 T45 S36	That 30' strip lying between Tracts 5-8 and 9-12, Block 61, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 61 R41 T45 S36	That 30' strip lying between Tracts 21-24 and 25-28, Block 61, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 65	That 30' strip lying between

R41 T46 S12	Tracts 8-14 and 15-21, Block 65, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 65 R41 T46 S12	That 30' strip lying between Tracts 4-53 and 5-52, Block 65, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm Beach County, Florida.
Block 65 R41 T46 S12	That 30' strip lying between Tracts 36-42 and 43-49, Block 65, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm b each County, Florida.
Block 66 R41 T46 S14	A 139' roadway running East to West along North Boundary line of Block 66, Palm Beach Farms Co., Plat #3, except for 600' canal right of way, recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm Beach County, Florida.

EXHIBIT "A"

Block 66 R41 T46 S14	That 30' strip lying between Tracts 3-4 and 5-6, Block 66, Palm Beach Farms Co., Plat #3, except for 600' canal R/W, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 66 R41 T46 S14	That 30' strip lying between Tracts 7-8 and 9-10, North of Tracts 11-12, Block 66, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm Beach County, Florida.
Block 66 R41 T46 S14	That 30' strip lying between Tracts 13-16 and 17-20, Block 66, Palm Beach Farms Co., Plat #3 except for 600' canal company R/W, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 66 R41 T46 S14	That 25' strip running East to West along the South Boundary Line of Block 66, Palm Beach Farms Co., Plat #3, except for 600' canal company right way, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 66 R41 T46 S14	That 25' strip lying West of Tracts 2, 3, 6, 7, 12, 13, 20, 21, less L-40 R/W, Block 66, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 67 R41 T46 S24	That 30' strip lying between Tracts 4-18 and 5-19, Block 67, Palm Beach Farms Co., Plat #3,

	recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida
Block 67 R41 T46 S24	That 30' strip lying between Tracts 8-14 and 15-21, Block 67, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 68 R41 T46 S26	That 30' strip lying between Tracts 21-24 and 25-28, Block 68, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 69 R41 T46 S36	That 30' strip lying between Tracts 13-24 and 25-36, Block 69, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 69 R41 T46 S36	That 30' strip lying between Tracts 9, 16, 33, 40 and 8, 17, 32, 41, Block 69, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 2 R42 T43 S29	30' lying between Tract 1, N boundary and Tract 5, S boundary, Block 2, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 2	30' lying between Tracts 7 & 8

R42 T43 S29	N boundary, and tracts 13 & 14, S boundary, Block 2, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 2 R42 T43 S29	30' lying between Tract 17, W boundary and Tract 16, E boundary, Block 2, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 3 R42 T43 S28	30' lying between Tract 16, E boundary and Tract 17, W boundary, Block 2, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 4 R42 T43 S27	30' lying between Tracts 1, 5, 6 and 2, 4 with S boundary at Florida State Turnpike R/W, Block 4, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 4 R42 T43 S27	30' lying between Tracts 8, 11, 14, 19 and 9, 15, 18 with N boundary at Florida State Turnpike R/W, Block 4, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 4 R42 T43 S27	30' lying between tracts 1 and 5 less and except Florida State Turnpike R/W, Block 4, Palm Beach Farms Co., Plat #3,

recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 4 R42 T43 S27	30' lying between tracts 9-10 and 16-15 with E boundary at Florida State Turnpike R/W, Block 4, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 4 R42 T43 S27	30' lying between tracts 9, 11, 12 and 13-15 with W boundary at Florida State Turnpike R/W, Block 4, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	25' lying S and adjacent of Tracts 74, 75 and 76, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between tracts 18, 23, 38, and 19,. 22, 39, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between tracts 14, 27, 34, 47, and 15, 26, 35, 46, with S boundary 396' from N boundary 396' from N boundary of tracts 46 and 47, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the

	Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between Tracts 74 and 75 with N boundary at Palm Beach Canal R/W, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between tracts 59 and 62, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between tracts 60 and 61, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between tracts 11-20 and 21-30, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	30' lying between tracts 2 and 3, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	25' lying East of Tracts 1, 20, 21, 40, 41, 60, 61, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 5 R42 T43 S34	25' lying West of Tract 71, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 5 R42 T43 S34	25' lying West of Tracts 10, 11, 30, 31, 50, less Florida Turnpike R/W, Block 5, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	25' lying East of Tracts 1, 12, 13, 24, 25, Block 6, Less Florida State Turnpike Road R/W Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	30' lying South of Tracts 11, 12 and North of Tract 13, less Florida State Turnpike Road R/W, Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	30' lying South of Tracts 7, 8, and 9 and North of Tracts 16, 17, 18, Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6	30' lying between Tracts 31 and

R42 T43 S33	42, Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	30' lying between Tracts 34, 35, and 38, 39, less Florida State Turnpike Road R/W Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	30' lying between Tracts 36, 37, Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	30' lying between tracts 45 and 46, Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 6 R42 T43 S33	25' lying East of Tract 48, Block 6, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 7 R42 T43 S32	30' lying between Tracts 40, 45 and 39, 46, with North boundary at Palm Beach Canal Block 7, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 7	25' lying South of Tracts 43-48

R42 T43 S32	Block 7, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 7 R42 T43 S32	25' lying West of Tracts 42-43 Block 7, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 7 R42 T43 S32	25' lying West of tracts 6, 7, Block 7, Palm Beach Farms Co., Plat #3, recorded in Plat book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 8 R42 T43 S31	25' lying East of Tracts 19 and 24, with N Boundary at West Palm Beach Canal R/W, Block 8, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm Beach County, Florida
Block 8 R42 T43 S31	25' lying East of Tracts 1 and 6 Block 8, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 8 R42 T43 S31	That 30' lying between Tracts 16-17 and 20-22, Block 8, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 8 R42 T43 S31	That 25' lying South of Tracts 24, Block 8, Palm Beach Farms Co., Plat #3, recorded in Plat

	Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	25' lying North of Tracts 1, 2, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	30' lying between Tracts 10, 11, and 14, 15, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	30' lying between Tracts 32, 33, 34 and 43, 44, 45, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	30' lying between E1/2 of Tract 12 and E1/2 of Tract 13, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	30' lying between Tracts 28 and 29, Block 10 Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	25' lying East of Tracts 1, 12, 13, 24 and 25, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages

	45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	30' lying between Tracts 20 and 21, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 10 R42 T44 S6	30' lying between West 1/2 of Tract 12, and West 1/2 of Tract 13, Block 10, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 11 R42 T44 S5	30' lying between tracts 44-46 and 51-53, Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 11 R42 T44 S5	30' lying between tracts 41-43 and 54-56, Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 11 R42 T44 S5	30' lying between tracts 4 and 5, Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 11 R42 T44 S5	30' lying between tracts 12 and 13, Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 11 R42 T44 S5	30' lying between tracts 47-48 and 49-50 with E. boundary at Florida State Turnpike R/W, Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 11 R42 T44 S5	25' lying West of tracts 8, 9, 24, 25, 40, Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 11 R42 T44 S5	25' lying North of Block 11, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 13 R42 T44 S3	That 30' lying between tracts 38 and 39, Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 13 R42 T44 S3	That 30' lying between Tracts 46 and 47, and running N from Dillman Road R/W for 339', Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 13 R42 T44 S3	That 30' lying between Tracts 31-33 and 40-42, Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 13 R42 T44 S3	That 30' lying between Tracts 26 and 27 from Canal L-5 R/W 275' S to Patricia Drive, Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 13 R42 T44 S3	That 30' lying between Tracts 46 and 47 running South of Tracts 38 and 39 for 321', Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 13 R42 T44 S3	That 25' lying North and adjacent of Tracts 3, 2, and 1, Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 13 R42 T44 S3	That 30' lying between Tracts 3 and 2, Block 13, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 16 R42 T44 S8	That 25' strip lying West of tracts 40, 41, Block 16, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 16 R42 T44 S8	That 25' strip lying West of Tracts 56 and 57 Block 16, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages

	45-54, of the Public Records of Palm Beach County, Florida.
Block 17 R42 T44 S7	30' strip lying between Tracts 7-9 and 16-18, Block 17, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 17 R42 T44 S7	30' lying East of Tracts 5, 8, 17, 20, 29, 32, Block 17, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 17 R42 T44 S7	30' lying East of Tracts 41, 44, Block 17, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 17 R42 T44 S7	25' lying East of Tracts 25, 36, Block 17, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 17 R42 T44 S7	25' lying East of 37, 48, Block 17, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 18 R41 T44 S12	25' strip lying between Tracts 4-6 and 7-9, Block 18, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 18 R41 T44 S12	25' strip lying between Tracts 17-19 and Tracts 22-24, Block 18, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 19 R42 T44 S18	That 30' strip lying between tracts 7-13 and 14-20, Block 19, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 19 R42 T44 S18	That 30' strip lying between Tracts 4-52 and 5-51, Block 19, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 19 R42 T44 S18	That 30' strip lying between Tracts 35-41 and 42-48, Block 19, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 19 R42 T44 S18	That 25' strip lying East of Tracts 1, 13, 14, 27, 28, 41, 42, 55, Block 19, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 20 R42 T44 S17	That 30' strip lying between Tracts 9-16 and 17-24, Block 20, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 20 R42 T44 S17	That 30 strip lying between Tracts 41-48 and 49-56 Block 20, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 20, R42 T44 S17	That 25' lying West of Tracts 8, 9, 24, 25, 40, 41, 56, 57, Block 20, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 22 R42 T44 S22	That 30' lying between Tracts 42, 43, Block 22, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 22 R42 T44 S22	That 30' lying between Tracts 58, 59, Block 22, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 22 R42 T44 S22	That 30' lying between Tracts 58, 62, Block 22, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 24 R42 T44 S20	That 25' lying West of Tracts 40, 41, 56, 57, Block 24, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 24	That 30' strip lying between

R42 T44 S20	Tracts 41-47 and 49-56, Block 24, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 25 R42 T44 S19	That 30' lying South of Tracts 40, 41, 42, Block 25, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 25 R42 T44 S19	That 25' lying East of Tracts 29, 42, 43, 56, Block 25, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 26 R41 T44 S24	50' strip lying between Tracts 5-8 and 9-12, Block 26, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 26 R41 T44 S24	30' strip lying between Tracts 21-24 and Tracts 25-28, Block 26, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 31 R42 T42 S34	25' strip lying between West of Tracts 9, 10, 27, 28, 43, 44, 59, Block 31, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32	That 30' strip lying between

R42 T44 S33	Tracts 92 and 101 with East Boundary at Colebright Drive R/W, and West Boundary at Colebright Drive R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' strip lying between Tracts 93-94 and 99-100 with East Boundary at Fearnley Drive R/W and West Boundary at Colebright Drive R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' strip lying between Tracts 95 and 98 with West Boundary at Fearnley Drive R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' strip lying between Tracts 96-97, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30 strip lying between Tracts 88, 105 and 89, 104, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 32 R42 T44 S33	That 30' lying between Tracts 8 and 9, with South Boundary at Canal Road R/W, Block 32, Palm Beach Farms Co., recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' lying between Tracts 31-32 and 33-34 with West Boundary at Fearnley Drive R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 25' lying East of Tracts 1, 32, 33, 64, 65, 96, 97, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' lying between Tracts 29-30 and 35-36 with East Boundary at Fearnley Drive R/W and West Boundary at Colebright Drive R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' lying between Tracts 27-28 and 37-38 with East Boundary at Colebright Drive R/W and West Boundary at 1st Road R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 32 R42 T44 S33	That 30' strip lying between Tracts 25-26 and 39-40, with East Boundary at 1st Road R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' lying between Tracts 23-24 and 41-42 with West Boundary at 3rd Road R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 32 R42 T44 S33	That 30' lying between Tracts 22 and 43 with East Boundary at 3rd Road R/W, Block 32, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 33 R42 T44 S32	That 30' strip lying between Tracts 23 and 26 with East Boundary at Florida Turnpike R/W, Block 33, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 33 R42 T44 S32	That 30' strip lying between Tracts 71 and 74, with East Boundary at the Florida Turnpike R/W, Block 33, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 38	That 25' strip lying East of

R42 T45 S4	Tracts 1, 32, 33, 64, 65, 96, 97, 128, Block 38, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 38 R42 T45 S4	That 30' strip lying between Tracts 81-96 and 97-112, Block 38, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 38 R42 T45 S4	That 30' strip lying between Tracts 17-32 and 33-48, Block 38, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 38 R42 T45 S4	That 30 strip lying between Tracts 9, 24, 41, 56, 73, 88, 105, 120 and 8, 25, 40, 57, 72, 89, 104, 121, Block 38, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 39 R42 T45 S3	That 30' lying between Tracts 46-54 and 55-63, Block 39, Palm Beach Farms Co., recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 39 R42 T45 S3	That 30' lying between Tracts 10-18 and 19-27, Block 39, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 39 R42 T45 S3	That 25' lying West of Tracts 9, 10, 27, 28, 45, 46, 63, 64, Block 39, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 42 R42 T45 S8	That 30' lying between Tracts 14-26 and 28-41, Block 42, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 42 R42 T45 S8	That 30' lying between Tracts 70-82 and 84-96, Block 42, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 42 R42 T45 S8	That 30' strip lying between Tracts 34-102 and 33-103, Block 42, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 42 R42 T45 S8	That 25' lying West of Tracts 13, 14, 41, 42, 69, 70, 96, 97, Block 42, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 43 R42 T45 S7	That 30' strip lying between Tracts 15-28 and 29-43, Block 43, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public

	Records of Palm Beach County, Florida.
Block 43 R42 T45 S7	That 30' strip lying between Tracts 73-78 and 89-100, Block 43, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 43 R42 T45 S7	That 30' strip lying between Tracts 37-106, Block 43, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 43 R42 T45 S7	That 25' strip lying East of Tracts 1, 28, 29, 58, 59, 88, 89, 114, Block 43, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 45 R42 T45 S18	That 25' lying East of Tracts 62, 93, 94, 125, Block 45, Palm Beach Farms Co., recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 45 R42 T45 S18	That 30' lying between Tracts 69-118 and 70-117, Block 45, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 45 R42 T45 S18	That 25' lying South of Tracts 92, 93, Block 45, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the

	Public Records of Palm Beach County, Florida.
Block 46 R42 T45 S17	That 25' lying West of Tracts 70, 71, 102, 103, Block 46, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 46 R42 T45 S17	That 30' strip lying between Tracts 71-85 and 88-102, Block 46, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 46 R42 T45 S17	That 30' strip lying between Tracts 62-111 and 63-110, Block 46, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 46 R42 T45 S17	That 25' strip running North to South along East Boundary line of Block 46, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 48 R42 T45 S2	That 25' strip running North to South along West Boundary line of Block 48, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 49 R42 T45 S21	That 30' strip lying between Tracts 8-104 and 9-105, Block 49, Palm Beach Farms Co., Plat

	#3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 49 R42 T45 S21	That 30' strip lying between Tracts 65-80 and 81-96, Block 49, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 49 R42 T45 S21	That 25' strip running North to South lying along the East Boundary of Block 49, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 50 R42 T45 S20	That 30' strip lying between Tracts 8-40 and 9-41, Block 50, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 50 R42 T45 S20	That 25' strip lying West of Block 50, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 50 R42 T45 S20	That 30' strip lying between Tracts 81-95 and 98-110, Block 50, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 51	That 30' strip lying between

R42 T45 S19	Tracts 8-105 and 9-104, Block 51, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 51 R42 T45 S19	That 30' strip lying between Tracts 73-86 and 87-99, Block 51, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 51 R42 T45 S19	That 25' strip lying East of Tracts 1, 30, 31, 58, 59, 86, 87, 112, Block 51, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 53 R42 T45 S30	That 30' strip lying between Tracts 13-17 and 32-36, Block 53, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 53 R42 T45 S30	That 30' strip lying between Tracts 21-24 and 25-28, Block 53, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 53 R42 T45 S30	That 30' strip lying between Tracts 9, 16, 33, 40, 57, 64, 81, 88 and 8, 17, 32, 41, 56, 65, 80, 89, Block 53, Palm Beach Farms Co., Plat #3,

	recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 53 R42 T45 S30	That 30' strip lying between Tracts 61-72 and 73-84, Block 53, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 53 R42 T45 S30	That 25' strip lying East of Tracts 1, 24, 25, 48, 49, 72, 73, 96, Block 53, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 54 R42 T45 S29	That 30' strip lying between Tracts 17-31 and 34-48, Block 54, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 54 R42 T45 S29	That 30' strip lying between Tracts 81-95 and 98-112, Block 54, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 54 R42 T45 S29	That 25' strip lying West of Tracts 16, 17, 48, 49, 80, 81, 112, 113, Block 54, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 55	That 30' strip lying between

R42 T45 S28	Tracts 17-24 and 41-48, Block 55, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 55 R42 T45 S28	That 30' strip lying between Tracts 81-96 and 97-112, Block 55, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 55 R42 T45 S28	That 25' lying East of Tracts 65, 96, 97, 128, Block 55, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 56 R42 T45 S27	That 30' lying between Tracts 41-48 and 49-56, Block 56, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 56 R42 T45 S27	That 25' strip lying West of Tracts 40, 41, 56, 57, Block 56, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 57 R42 T45 S34	That 30' strip lying between Tracts 5-8 and 9-12, Block 57, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 57	That 30' strip lying between

R42 T45 S34	Tracts 21-24 and 25-28, Block 57, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 57 R42 T45 S34	That 25' strip lying West of Block 57, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 57 R42 T45 S34	That 25' strip lying East of Block 57, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 58 R42 T45 S33	That 30' strip lying between Tracts 17-32 and 33-48, Block 58, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 58 R42 T45 S33	That 30' strip lying between Tracts 81-96 and 97-112, Block 58, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 58 R42 T45 S33	That 25' lying East of Tracts 1, 32, 33, 64, 65, 96, 97 and 128. Block 58, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 59 R42 T45 S32	That 30' strip lying between Tracts 17-31 and 34-48, Block 59, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 59 R42 T45 S32	That 30' strip lying between Tracts 81-95 and 98-112, Block 59, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 59 R42 T45 S32	That 25' strip lying West of Tracts 16, 17, 48, 49, 80, 81, 112, 113, Block 59, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 60 R42 T45 S31	That 30' strip lying between Tracts 13-24 and 25-36, Block 60, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 60 R42 T45 S31	That 30' lying between Tracts 61-72 and 73-84, Block 60, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 60 R42 T45 S31	That 30' lying between Tracts 9, 16, 33, 40, 57, 64, and 65, 56, 41, 32, 17, 8, Block 60, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages

45-54, of the Public Records of Palm Beach County, Florida.

Block 60
R42 T45 S31

That 25' strip lying East of Tracts 1, 24, 25, 48, 49, 72, 73, 96, Block 60, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 62
R42 T46 S6

That 30' strip lying between Tracts 57, 64, 81, 88 and 89, 65, 56, Block 62, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 62
R42 T46 S6

That 30' strip lying South of Tracts 61 through 72, Block 62, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 62
R42 T46 S6

That 25' strip lying East of Tracts 1, 24, 25, 48, 49, 72, 73, 92, Block 62, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 63
R42 T46 S5

That 30' strip lying between Tracts 17-31 and 34-48, Block 63, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 63
R42 T46 S5

That 30' lying between Tracts 81-95 and 98-112, Block 63, Palm Beach Farms Co., Plat #3,

	recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 63 R42 T46 S5	That 25' strip lying West of Block 63, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 64 R42 T46 S4	That 30' strip lying between Tracts 17-24 and 41-48, Block 64, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 64 R42 T46 S4	That 30' strip lying between Tracts 81-96 and 97-112, Block 64, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 64 R42 T46 S4	That 25' strip lying East of Tracts 65, 96, 97, 120, Block 64, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 70 R42 T46 S31	That 30' strip lying between Tracts 81-96 and 97-112, Block 70, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

Block 70 R42 T46 S31	That 30' strip lying between Tracts 9, 24, 41, 56, 73, 88, 105 and 8, 25, 40, 57, 72, 89, 104, Block 70, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 70 R42 T46 S31	That 30' strip lying between Tracts 17-32 and 33-48, Block 70, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 70 R42 T46 S31	That 25' strip lying East of Tracts 1, 32, 38, 64, 65, 96, 97, 128, of Block 70, except for 600' canal right of way, recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm Beach County, Florida.
Block 71 R42 T46 S32	That 30' strip lying between Tracts 84-90 and 91-97 with East boundary at Florida State Turnpike R/W, Block 71, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 71 R42 T46 S32	That 30' strip lying between Tracts 16-30 and 31-45 with East Boundary at Florida State Turnpike R/W, Block 71, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 71	That 30' strip lying between

R42 T46 S32	Tracts 8, 23, 38, 53, 68 and 7, 24, 37, 54, 67 with South Boundary at circle approximately 1751' from North Boundary of Tract 68, Block 71, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 71 R42 T46 S32	That 30' strip lying between Tracts 76-83 and 98-105, Block 71, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 71 R42 T46 S32	That 25' strip lying West of Tracts 15, 16, 45, 46, 75, 76, 105, 106, Block 71, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 73 R42 T47 S6	That 30' strip lying between Tracts 8 and 9, Block 73, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 73 R42 T47 S6	That 30' strip lying South of Tracts 81-83 and North of 110-112, Block 73, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 75 R42 T47 S8	That 25' strip lying South of Tracts 91-94, Block 75, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages

	45-54, of the Public Records of Palm Beach County, Florida.
Block 75 R42 T47 S8	A tapered parcel 21' wide at the North end, 20' wide at the South end lying East of Tracts 95 and 108 and West of Section 8, with a North Boundary at 197' North of the South Boundary of Tract 95 and the South Boundary of said parcel at 702' South of the Northeast corner of Tract 108, Block 75, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 76 R42 T47 S17	That 30' strip lying between Tracts 8, 9, 10, 11 and North of Tracts 18, 19, 20, 21, Block 76, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 77 R42 T47 S18	That 30' strip lying South of Tracts 17 through 32, and North of Tracts 33 and 48, Block 77, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 77 R42 T47 S18	That 30' strip lying between Tracts 9, 24, 41, 56, and West of Tracts 8, 25, 40, 57, Block 77, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 78	That 30' strip lying South of

R42 T47 S19	Tracts 15 through 25, and North of Tracts 32 through 42, Block 78, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 78 R42 T47 S19	That 30' strip lying East of Tracts 9, 20, 37, 48 and West of Tracts 8, 21, 36, 49, Block 78, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 78 R42 T47 S19	That 30' strip lying East of Tracts 71, 72, and North of Tracts 97, 98, Block 78, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 78 R42 T47 S19	That 30' strip lying East of Tract 76, Block 78, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.
Block 81 R42 T47 S30	That 30' strip lying between Tracts 8 and 9, Block 81, Palm Beach Farms Co., Plat #3, recorded in Plat Book 2, Pages 45-54, of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PENINSULAR TITLE COMPANY, et al.,

Plaintiffs.

v.

CASE NO. 88-8111
CIV-GONZALEZ

PALM BEACH COUNTY, et al.,

_____/

ORDER

THIS CAUSE has come before the Court for review upon the defendants' motion for summary judgment and the plaintiff's motion for partial summary judgment.

The Court heard oral argument on these motions on Friday, March 30, 1990.

Having considered the argument of counsel, and having reviewed the motion, the record, and being otherwise fully advised, it is hereby:

ORDERED AND ADJUDGED as follows:

(1) That the defendants' motion for summary judgment be DENIED; and

(2) That the plaintiffs' motion for partial summary judgment be GRANTED in part.

The Court finds that there are no genuine issues as to the following material facts, and that the plaintiffs are entitled to summary judgment as a matter of law, as follows:

(A) The "strip parcels," as defined in paragraph 19 of the complaint, were offered for dedication to Palm Beach County by the Palm Beach Farms Company, as indicated by that certain Palm Beach Farms Plat No. 3, recorded in Plat Book 2, pages 45-54, Public Records of Palm Beach County, Florida.

(B) The plaintiffs' chain of title as alleged in paragraph 18 of the complaint is true and correct.

The Court further finds that there are no genuine issues as to these additional material facts:

(A) During the time period beginning April 20, 1912 and continuing through June 15, 1927, Palm Beach County did not by formal resolution, discussion or reference, accept the offer of dedication in Palm Beach Farms Plat No. 3; See, Affidavit of Eugene Haber.

(B) The deed from Palm Beach Farms to Elmer T. Anderson dated December 26, 1926, recorded in deed book 384, page 54, Public Records of Palm Beach County,

Florida, was not a revocation of Palm Beach Farms' offer of dedication in Palm Beach Farms Plat No. 3. See, Weber v. City of Hollywood. 120 So.2d 826 (Fla. 2 D.C.A. 1960).

Thus, the Court will sua sponte enter summary judgment as to the preceding two additional material facts.

The subsequent course of this action will be governed by the foregoing findings of fact and conclusions of law.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 5th day of April, 1990.

/s/ Jose A. Gonzalez, Jr.
JOSE A. GONZALEZ, JR.
UNITED STATES DISTRICT JUDGE

cc: Samuel R. Mandelbaum, Esq., for distribution to all parties.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PENINSULAR TITLE CO., et al,

Plaintiffs,

v.

PALM BEACH COUNTY, et al.,

Defendants.
_____/

Aug. 30, 1991

CASE NO. 88-8111
CIV-GONZALEZ

ORDER

This cause has come before the Court pursuant to the plaintiff,s second motion for partial summary judgment.

Also before the Court is the plaintiffs', uncontested motion for entry of order on issued resolved by the pre-trial stipulation, the plaintiffs' motion to set cause for trial, and the plaintiffs' motion for formal oral argument or informal telephonic conference.

The Court has reviewed the motions, the record, and the being otherwise duly advised, it is hereby:

ORDERED and ADJUDGED that the plaintiffs' second motion for partial summary judgment be GRANTED in part. Due to the stipulation of the

parties, as recorded in the pre-trial stipulation filed on July 9, 1991, there are no genuine issues as to the following material facts:

> 1. On September 9, 1976, the offer of dedication of the strip parcels in question was revoked (to the extent that it had not previously been accepted); and
>
> 2. At no time prior to September 9, 1976, did Palm Beach County expressly accept the offer to dedicate the strip parcels.

The Court finds, however that genuine issues of material facts do remain on whether prior to September 9, 1976, Palm Beach County did not impliedly accept the offer of dedication of the strip parcels, and hence, the plaintiffs' second motion for partial summary judgment with respect to these facts must be **DENIED**.

In addition, the plaintiffs' uncontested motion for entry of order on issued resolved by the pre-trial stipulation is **GRANTED** as reflected above, the plaintiffs' motion to set cause for trial is **GRANTED**, and this case will be re-set for trial pursuant to the further

Order of this Court, and the plaintiffs' motion for formal oral argument or informal telephonic conference is **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this: 30th day of August, 1991.

\s\ Jose A. Gonzalez, Jr.
JOSE A. GONZALEZ, JR.
UNITED STATES DISTRICT JUDGE

cc: All counsel

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-4104
93-4449

WEST PENINSULAR TITLE CO.,
ABSOLUTE, INC.
MARION H. COOPER,
for Estate of Alfred R. Cooper,

Plaintiffs-Appellees,

versus

PALM BEACH COUNTY,
CAROL A. ROBERTS, Chair of Board
of County Commissioners of
Palm Beach County,

Defendants-Appellants.

On Appeal from the United States
District Court for the
Southern District of Florida

ON PETITION FOR REHEARING

BEFORE, HATCHETT, EDMONDSON, Circuit Judges and MELTON*, Senior U.S. District Judge.

PER CURIAM:

The petition for rehearing filed by appellants is denied.

ENTERED FOR THE COURT:

\s\ J.L. Edmondson
United States Circuit Judge

*Honorable Howell W. Melton, Senior U.S. District Judge for the Middle District, sitting by designation.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
Civil Action, File Number _____

WEST PENINSULAR TITLE COMPANY, a Florida corporation, ABSOLUTE, INC., a Florida corporation, and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,	88-8111 CIV-GONZALEZ
Plaintiffs,	
vs.	
PALM BEACH COUNTY, a political subdivision of the State of Florida, and CAROL A. ROBERTS, Chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY,	
Defendants.	

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

COME NOW the Plaintiffs, West Peninsular Title Company, a Florida corporation, Absolute, Inc., a Florida corporation, and Marion H. Cooper, as Personal Representative of the Estate of Alfred R. Cooper, by and through their undersigned attorneys, and sue the

Defendants, Palm Beach County, a political subdivision of the State of Florida, and Carol A. Roberts, Chair of the Board of County Commissioners of Palm Beach County, and allege as follows:

JURISDICTION

1. Jurisdiction in this cause is founded on the existence of a federal question and amount of controversy. This action is brought pursuant to the provisions of 42 U.S.C. §§1983, 1985 and 1988, 28 U.S.C. §§2201 and 2202, the Fifth and Fourteenth Amendments to the United States Constitution, and the laws of the State of Florida, and seeks redress for violation under color of state law of Plaintiffs' Fifth and Fourteenth Amendment rights. The Plaintiffs seek an award of compensatory damages, injunctive relief, declaratory relief and their costs expended herein, and an award of attorneys' fees under 42 U.S.C. §1988. The matter in controversy exceeds, exclusive of interest and costs, the

sum of Ten Thousand and 00/100 Dollars ($10,000.00).

2. Jurisdiction of this Court is involved pursuant to 28 U.S.C. §§1331 and 1343 (§3) and (§4) with respect to Plaintiffs' causes of action under the Constitution and laws of the United States and pursuant to the pendent jurisdiction of this Court with respect to Plaintiffs' causes of action under the laws of Florida. The amount of controversy exceeds Ten Thousand and 00/100 Dollars ($10,000.00).

3. Jurisdiction is further founded on diversity of citizenship and amount. Plaintiff MARION H. COOPER is a citizen of the State of Tennessee. The Defendants PALM BEACH COUNTY and THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY are governmental entities and political subdivisions of the State of Florida.

PARTIES

4. West Peninsular Title Company, a Florida corporation ("WEST PENINSULAR"), owns real property in Palm Beach County, Florida.

5. Absolute, Inc., a Florida corporation ("ABSOLUTE"), owns real property in Palm Beach County, Florida.

6. Alfred R. Cooper, deceased, was the sole stockholder in WEST PENINSULAR and ABSOLUTE on the date of his death.

7. MARION H. COOPER is the Personal Representative of the Estate of Alfred R. Cooper (the "ESTATE"), and is a resident of State of Tennessee.

8. All real property owned and held by WEST PENINSULAR and ABSOLUTE is property of the ESTATE.

9. Palm Beach County (the "COUNTY") is a political subdivision of the State of Florida.

10. Carol A. Roberts is the Chair of the Board of County Commissioners of Palm Beach County (the "BOARD"), which is the elected governing legislative body of Palm Beach County.

11. WEST PENINSULAR is a successor in interest to The Palm Beach Farms Company ("PALM

BEACH FARMS"), a dissolved Colorado corporation.

12. ABSOLUTE is a successor in interest to PALM BEACH FARMS, a dissolved Colorado corporation.

GENERAL ALLEGATIONS

13. PALM BEACH FARMS was the owner in fee simple of certain lands situated in Palm Beach County, Florida, in the early 1900's, and which lands are more particularly described as follows:

> Parts of Sections 7 and 18 and all of Sections, 8, 9, 17, 19 and 20 of the West 1/2 of Section 21, the West 1/2 of Section 28, and all of Sections 29 and 30 in Township 46 South, Range 42 East.

14. On or about December 26, 1911, PALM BEACH FARMS caused the lands referenced in paragraph 13 above to be subdivided into tracts and roads with the tracts numbered and the roads marked as designated on the plat created thereby and identified as Plat No. 1. (A copy of Plat No. 1 is marked as Composite Exhibit A

and attached hereto and incorporated herein by reference.)

15. PALM BEACH FARMS was the owner in fee simple of lands situated in Palm Beach County, Florida, and more particularly described as follows:

> The East 3/4 of Section 36 of Township 43 South, Range 41 East; the East 1/2 of Section 12, the East 1/2 of Section 24, and the East 1/2 of Section 36 in Township 44 South, Range 41 East; the East 1/2 of Section 12, the East 3/4 of Section 24, and the East 3/4 of Section 36 in Township 45 South, Range 41 East; Sections 12, 24, 36, the East 1/2 of the Northeast 1/4 and the Southeast 1/4 of Section 14, and the East 1/2 of Section 26 in Township 46 South, Range 41 East; the West 1/2 of Section 27, Section 28, Section 29, Section 30, Section 31, Section 32, Section 33, and Section 34 in Township 43 South, Range 42 East; the West 1/2 of Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, and Section 9, the West 1/2 of Section 10, the West 1/2 of Section 15, Section 17, Section 18, Section 19, Section 20, Section 21, Section 28, Section 29, Section 30, Section 31, Section 32, Section 33, the West 1/2 of Section 22, the West 1/2 of Section 27, and the West 1/2 of Section 34, in Township 44 South, Range 42 East; the West 1/2 of Section 3, the West 1/2 of Section 10, the West 1/2 of Section 15, the West 1/2 of Section 22, the West 1/2

of Section 27, the West 1/2 of the West 1/2 of Section 34, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 17, Section 18, Section 19, Section 20, Section 21, Section 28, Section 29, Section 30, Section 31, Section 32, Section 33, in Township 45 South, Range 42 East; Section 4, Section 5, Section 6, Section 31 and Section 32, in Township 46 South, Range 42 East; Sections 5, 6, 7, 18, 19, 20, 29, 30, 31, the West 1/2 of Section 32, the West 1/2 and Northeast 1/4 and Northwest 3/4 and Southeast 1/4 of Section 8, the West 1/2 and Southeast 1/4 and South 1/4 of the Northeast 1/4 of Section 17, Township 47 South, Range 42 East; Sections 6, 7, 18, 19, 30, 31, the West 1/2 of Section 5, the West 1/2 of Section 8, the West 1/2 of Section 17, the West 1/2 of Section 20, the West 1/2 of Section 29 in Township 48 South, Range 42 East; the West 1/2 of Section 6, the West 1/2 of Section 7 in Township 49 South, Range 42 East.

16. PALM BEACH FARMS caused the land identified in paragraph 15 above to be subdivided into ninety-six (96) blocks, and said blocks into tracts, all as shown and numbered on The Palm Beach Farms Company Plat No. 3, with strips of land between said blocks and tracts for adjoining the outer-boundaries thereof for use as follows:

a) Reservation of strips for ditch purposes sixty (60) feet wide adjoining on the east the Range line between Ranges 41 and 42 East, except in Block 67, where said reservation adjoins said Range line on the west, and at Township line between Townships 48 and 49 South, where said reservation adjoins said Township line on the south as shown on sheet number 10;

b) Reservation of strips for road purposes twenty-five (25) feet wide on each side of said ditch reservation, except where the company's land shown on the plat borders said ditch reservation on one side only, and in such case on that side.

c) Reservation for road, dike and ditch purposes of the other strips marked "Road" on Plat No. 3, said reservations being fifty (50) feet in width between blocks, thirty (30) feet in width within blocks and twenty-five (25) feet in width where adjoining the exterior lines of the two school Sections 16 lying wholly within the company's lands shown

hereon, and also between the nearest block line and the exterior boundary line of said lands where not coincident with the Range or Township line for said. (A copy of Plat No. 3 is marked as Composite Exhibit B and attached hereto and incorporated herein by reference.)

17. PALM BEACH FARMS offered to dedicate to public use as roadways all reservations so made in subparagraphs (b) and (c) in paragraph 16 above, subject to such use thereof for ditch and dike purposes as may be consistent with such public use for road purposes.

18. Plaintiffs derive their title to the property described herein as follows:

a. John Murdock Barns, Grantor, conveyed to The Palm Beach Farms Company, Grantee, by Deed dated November 18, 1910 and recorded at Deed Book 8, Page 235;

b. The Palm Beach Farms Company, Grantor, conveyed to Elmer T. Anderson, Grantee, by Deed dated December 16, 1926 and recorded in Deed Book 384, Page 54;

c. Elmer T. Anderson, Grantor, conveyed to The Hillsborough Company, Grantee (a dissolved Delaware corporation as of December 20, 1938), by Deed dated July 8, 1927 and recorded in Deed Book 416, Page 226;

d. The Hillsborough Company, Grantor, conveyed to Roy F. Anderson, Grantee, by Deed dated September 7, 1938 and recorded in Deed Book 580, Page 433;

e. Roy F. Anderson, Grantor, conveyed to Alfred R. Cooper, Grantee, by Deed dated April 25, 1967 and recorded in O.R. Book 1535, Pages 320 and 321, all of the Public Records of Palm Beach County, Florida;

f. Alfred R. Cooper, Grantor, conveyed to West Peninsular Title Company, a Florida corporation, Grantee, by Deed dated June 2, 1976 and recorded in O.R. Book 2545, Pages 1998-2000A, and O.R. Book 2546, Pages 1-20, all of the Public Records of Palm Beach County, Florida, and by Deed dated August 17, 1976 and recorded in O.R. Book 6091, Pages 433-434 of the Public Records of Broward County,

Florida. (Copies of the Deeds referenced in this paragraph 18 are marked as Composite Exhibit C and are attached hereto and incorporated herein by reference).

19. PALM BEACH FARMS offered to dedicate certain strips of real property for road purposes and designated such strips of property on Plat No. 3, Palm Beach County, Florida as recorded in Plat Book 2, Pages 45-54 of the Public Records of Palm Beach County, Florida (hereinafter the "STRIP PARCELS"). Attached as Composite Exhibit D are the legal descriptions of each and every one of the STRIP PARCELS offered by PALM BEACH FARMS. The offer to dedicate the STRIP PARCELS was not accepted by the COUNTY prior to revocation, as alleged hereinafter.

20. Prior to 1926, the COUNTY did not accept the STRIP PARCELS offered for dedication by PALM BEACH FARMS.

21. On or about December 16, 1926 and prior to acceptance by the COUNTY of the offer to dedicate, PALM BEACH FARMS impliedly revoked

its common law offer of dedication of the STRIP PARCELS by conveying all its right, title and interest in that property to Elmer T. Anderson. (A copy of this deed is included in Composite Exhibit C.)

22. As a result of PALM BEACH FARMS' conveyance to Elmer T. Anderson, which constituted an implied revocation of the offer of dedication, the COUNTY'S interest and the public's interest in the STRIP PARCELS was terminated.

23. Conjunctively and in the alternative to the implied revocation, as alleged in paragraphs 19 and 20, on or about September 8, 1976, Alfred R. Cooper, successor in interest of PALMS BEACH FARMS, expressly revoked the offer to dedicate the STRIP PARCELS prior to acceptance the COUNTY. (A copy of this revocation is marked as Exhibit E and attached hereto and incorporated herein by reference.)

24. Prior to acceptance by the COUNTY, as a result of Alfred R. Cooper's express revocation of the offer to dedicate the STRIP

PARCELS, the public's interest and the COUNTY's interest in the STRIP PARCELS was terminated.

25. The COUNTY has never accepted the offer to dedicate the STRIP PARCELS.

26. The COUNTY has historically taken the position that the offer to dedicate the STRIP PARCELS was not accepted. (See letters from Carol A. Roberts, Chair of the Board of County Commissioners, marked as Composite Exhibit F and attached hereto and incorporated herein by reference.)

27. The COUNTY has historically taken the position that the STRIP PARCELS are undedicated. (See letter from Richard Graddock, Assistant County Attorney, marked as Exhibit G and attached hereto and incorporated herein by reference.)

28. The COUNTY does not claim a fee simple interest in the STRIP PARCELS. (See letter from William J. Capito, Assistant County Attorney, marked as Exhibit H and attached hereto and incorporated hereby by reference.)

29. On or about June 24, 1986, the Board of County Commissioners for Palm Beach County, Florida passed an ordinance, Ordinance No. 86-18 (the "ORDINANCE"), prescribing regulations governing the vacation and abandonment of rights-of-way. (Attached hereto and marked as Exhibit I is a copy of Ordinance No. 86-18 which is incorporated herein by reference.)

30. The ORDINANCE provides that an application fee and a privilege fee be paid to the COUNTY by the petitioner for such right-of-way abandonments.

31. Privilege fees, however, do not apply to petitions submitted by the fee simple owner of the property subject to an easement or the original gratuitous conveyor of all the strip parcels to be abandoned.

32. WEST PENINSULAR and ABSOLUTE are the fee simple owners of the STRIP PARCELS.

33. WEST PENINSULAR and ABSOLUTE are successors in interest to the original gratuitous conveyor of all the STRIP PARCELS

originally offered for dedication by plat in 1912.

34. The privilege fee is determined and fixed by computing eighty percent (80%) of the tax assessed value of the land adjacent to the road right-of-way to be abandoned.

35. The COUNTY does not claim a fee simple interest in the STRIP PARCELS.

36. The COUNTY does not claim that it has accepted the offer to dedicate the STRIP PARCELS.

37. It is inappropriate for the COUNTY to receive privilege fees for property it does not claim any right, title or interest in.

COUNT I

Unconstitutional Taking Under §1983

38. This is an action for damages under 42 U.S.C. §§1983, 1985 and 1988, 28 U.S.C. §§2201 and 2202, and the Fifth and Fourteenth Amendments to the United States Constitution for damages resulting from a regulatory taking stemming from an unconstitutional ordinance,

i.e, Ordinance No. 86-18 passed by the BOARD on or about June 24, 1986.

39. The Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 as if fully set forth herein.

40. As a result of the enactment and enforcement of the ORDINANCE under the color of state law, local law, governing ordinances, policy, custom and official power, the Defendants had deprived the Plaintiffs of their property without due process, had taken their property without just compensation, and had acted arbitrarily and capriciously in adopting the challenged ORDINANCE.

41. Plaintiffs have retained the law firm of Smith & Williams, P.A., and are obligated to pay said attorneys a reasonable fee for their services.

WHEREFORE, Plaintiffs demand judgment against the COUNTY for damages, attorneys' fees, and for such other and further relief as this Court deems appropriate, and for a jury trial on all issues so triable.

COUNT II

Permanent Injunction

Against Unconstitutional Action

42. This is an action to permanently enjoin the Defendants from enforcing the ORDINANCE passed by the BOARD on or about June 24, 1986.

43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 and the allegations of Count I as if fully set forth herein.

44. The enforcement of the ORDINANCE shall continue to violate the Plaintiffs' constitutional rights, contrary to the Fifth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. §1983, and has caused and will continue to cause serious irreparable harm to the Plaintiffs, for which there is no adequate remedy at law.

45. Plaintiffs have retained the law firm of Smith & Williams, P.A., and are obligated to pay said attorneys a reasonable fee for their services.

WHEREFORE, Plaintiffs seek a permanent injunction, thereby prohibiting the Defendants from any further enforcement of the ORDINANCE with regard to the STRIP PARCELS, including, but not limited to, any further actions regarding abandonment under the ORDINANCE, for such other and further relief as this Court deems appropriate, and for a trial by jury on all issues so triable.

COUNT III

Temporary Injunction

Against Unconstitutional Action

46. This is an action in equity to enjoin the COUNTY from further enforcement of the ORDINANCE pursuant to 42 U.S.C. §§1983 and 1985.

47. Plaintiffs reallege and incorporate herein paragraphs 1 through 37 and the allegations of Counts I and II as if fully set forth herein.

48. Any further enforcement of the ORDINANCE by the Defendants will cause and continue to cause irreparable harm and injury

to the Plaintiffs before this action is resolved.

49. Continuing enforcement of the ORDINANCE will cause injury of a continuing nature to the Plaintiffs, for which there is no adequate remedy at law.

50. Plaintiffs are the fee simple owners of the STRIP PARCELS and therefore have a clear legal right to request that the COUNTY be enjoined from further enforcement of the ORDINANCE in question.

51. Plaintiffs, as fee simple owners of the STRIP PARCELS, have a substantial likelihood of prevailing in this action on the merits.

52. It is in the public's interest to prohibit the COUNTY from further enforcement of the ORDINANCE and from the unlawful taking of the property of another.

WHEREFORE, Plaintiffs seek a temporary injunction, prohibiting the COUNTY from further enforcement of the ORDINANCE in question.

COUNT IV

Declaratory Relief From

Unconstitutional Ordinance

53. This is an action for declaratory relief and a declaratory judgment pursuant to 28 U.S.C. §§2201 - 2202, therein declaring unconstitutional Ordinance No. 86-18, passed by the BOARD on or about June 24, 1986, which prescribes regulations governing the vacation and abandonment of rights-of-way.

54. Plaintiffs reallege and incorporate herein paragraphs 1 through 37 and the allegations of Counts I, II and III as if fully set forth herein.

55. There is a bona fide, actual, present and practical need for the declaration of the rights, duties and obligations of the Plaintiffs and the COUNTY concerning the STRIP PARCELS.

56. The declaration will deal with the present controversy regarding the constitutionality of the ORDINANCE, and the rights of persons claiming a right, title or interest in the STRIP PARCELS.

57. The Plaintiffs are in doubt as to their rights as fee simple owners of the STRIP PARCELS with respect to enforcement of the ORDINANCE in question.

58. Plaintiffs are entitled to have such doubts removed.

59. The interests of the Plaintiffs and Defendants are actual, present and adverse to each other regarding enforcement of the ORDINANCE in question.

WHEREFORE, Plaintiffs demand entry of a declaratory judgment pursuant to 28 U.S.C. §§2201-2202, declaring therein that the ORDINANCE is unconstitutional and in violation of the Fifth and Fourteenth Amendments to the United States Constitution, are entitled to relief pursuant to 42 U.S.C. §§1983, 1985 and 1988, with any such further relief as this Court deems necessary and proper, including costs and attorneys' fees, and respectfully demands a trial by jury as to all issues so triable.

COUNT V

Temporary Prohibitory Injunction

60. This is an action in equity to enjoin the COUNTY from taking any further actions with regard to any interest it allegedly has in the STRIP PARCELS, including, but not limited to, any further abandonments under the ORDINANCE.

61. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 as if fully set forth herein.

62. Any further actions or abandonments by the COUNTY will cause irreparable harm to the Plaintiffs before this action is resolved.

63. Further, such actions or abandonments will cause injury of a continuing nature to the Plaintiffs for which there is no adequate remedy at law.

64. Plaintiffs are the fee simple owners of the STRIP PARCELS and therefore have a clear legal right to request that the COUNTY be enjoined from unlawfully taking Plaintiffs' STRIP PARCELS.

65. Plaintiffs, as fee simple owners of the STRIP PARCELS, have a substantial likelihood of prevailing in this action.

66. It is in the public's interest to prohibit the County from the unlawful taking of property of another.

WHEREFORE, Plaintiffs seek a temporary prohibitory injunction prohibiting the COUNTY from further acts inconsistent with the Plaintiffs' rights in the STRIP PARCELS until this Court can be presented with the entire facts of the case and determine whether a permanent prohibitory injunction should be issued against the COUNTY.

COUNT VI

Permanent Prohibitory Injunction

67. This is an action for a permanent prohibitory injunction, prohibiting the COUNTY from taking any further actions consistent with the allegation that the COUNTY has some interest in the STRIP PARCELS, including, but not limited to, prohibiting it from taking any

further actions regarding abandonment of the STRIP PARCELS under the ORDINANCE.

68. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 as if fully set forth herein.

69. The COUNTY's actions inconsistent with the Plaintiffs' sole and encumbered fee interest in the STRIP PARCELS have caused and will continue to cause serious irreparable harm to the Plaintiffs, for which there is no adequate remedy at law.

70. Plaintiffs have retained the law firm of Smith & Williams, P.A., and are obligated to pay said attorneys a reasonable fee for their services.

WHEREFORE, Plaintiffs seek a permanent prohibitory injunction, prohibiting the COUNTY from taking any further actions with regard to the STRIP PARCELS, including, but not limited to, any further actions regarding abandonment under the ORDINANCE, for such other and further relief as this Court deems appropriate, and for a jury trial on all issues so triable.

COUNT VII

Constructive Trust

71. This is an action to impress a constructive trust, to impose an equitable lien, and for damages that exceed Ten Thousand and No/100 Dollars ($10,000.00).

72. Plaintiffs allege and incorporate by reference paragraphs 1 through 37 as if fully set forth herein.

73. The COUNTY has received, will receive, or intends to receive money or its equivalent in exchange for an abandonment by the COUNTY pursuant to the ORDINANCE.

74. The COUNTY, by and through its authorized representatives, with knowledge of the interests of the Plaintiffs in the property abandoned, accepted such funds, which are the proceeds of the sale of Plaintiff's property rights by the COUNTY.

75. As a result of Defendant COUNTY's acceptance of such funds from property in which the Plaintiffs hold sole, unencumbered title, the Plaintiffs have been damaged and are

entitled to the imposition of a constructive trust or an equitable lien on the funds received by the COUNTY, or on any real or personal property acquired with such funds.

76. Plaintiffs do not have an adequate remedy at law.

WHEREFORE, Plaintiffs request that this Court declare that the COUNTY holds the aforementioned monies and any real or personal property acquired with said monies under a constructive trust for the benefit of the Plaintiffs, or in the alternative, that the Plaintiffs have an equitable lien on these monies or on any real or personal property purchased with these monies, plus interest, Plaintiffs' costs of this action, for such other and further relief as this Court deems appropriate, and for a jury trial on all issues so triable.

COUNT VIII

Declaratory Judgment

77. This is an action for Declaratory Judgment pursuant to Chapter 86, Florida Statutes.

78. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 and each and every allegation of Counts V, VI and VII as if fully set forth herein.

79. There is a bona fide, actual, present, and practical need for the declaration of the rights, duties, and obligations of the Plaintiffs and the COUNTY concerning the STRIP PARCELS.

80. The declaration will deal with present, ascertained or ascertainable facts, or present controversy about the STRIP PARCELS, and the rights of persons claiming a right, title or interest in the STRIP PARCELS.

81. The COUNTY does not recognize the Plaintiffs as the fee simple owners of the STRIP PARCELS.

82. Plaintiffs claim fee simple ownership of the STRIP PARCELS.

83. There is a bona fide dispute between Plaintiffs and the COUNTY as to who is the fee simple owner of the STRIP PARCELS.

84. Plaintiffs are in doubt as to the existence or non- existence of their rights as fee simple owners of the STRIP PARCELS.

85. Plaintiffs are entitled to have such doubts removed.

86. The declaration will deal with present, ascertained, or ascertainable facts, or present controversy concerning the dedication of the STRIP PARCELS, and the offer of dedication or the rights of persons claiming a right, title or interest in the STRIP PARCELS.

87. The COUNTY has taken varying positions regarding the acceptance of PALM BEACH FARMS' offer to dedicate the STRIP PARCELS to the COUNTY in 1912.

88. There is a bona fide dispute between Plaintiffs and the COUNTY as to whether the STRIP PARCELS have been dedicated to the COUNTY.

89. Plaintiffs are in doubt as to the interest the COUNTY has in the STRIP PARCELS.

90. Plaintiffs are entitled to have such doubts removed.

91. The rights of the Plaintiffs and the COUNTY are dependent on the facts concerning the STRIP PARCELS, or the law applicable to the STRIP PARCELS.

92. The interests of the Plaintiffs and the COUNTY are actual, present and adverse to each other regarding the STRIP PARCELS.

WHEREFORE, Plaintiffs demand entry of Declaratory Judgment that:

A. The chain of title is as alleged in paragraph 18 above, that is, the Plaintiffs, WEST PENINSULAR and ABSOLUTE, are the owners in fee simple of the STRIP PARCELS.

B. PALM BEACH FARMS offered to dedicate the STRIP PARCELS by virtue of the plat marked as Composite Exhibit B.

C. The offer of dedication was not accepted by the COUNTY prior to implied

revocation by PALM BEACH FARMS or its successor in interest.

D. In the alternative to C., the offer of dedication was revoked by express revocation by PALM BEACH FARMS or its successor in interest prior to being accepted by the COUNTY.

E. Revocation of the offer of dedication by PALM BEACH FARMS or its successor in interest occurred prior to acceptance of the dedication by the COUNTY.

F. The COUNTY is estopped to change its position and assert that the offer of dedication was accepted by Palm Beach County.

G. The Plaintiffs have a constructive trust on any and all sums or other property received, or property acquired with monies or property received pursuant to any abandonment(s) under the ORDINANCE.

WEST PENINSULAR TITLE COMPANY

/s/ James H. Andrews
By: James H. Andrews
Its: President

ABSOLUTE, INC.

/s/ James S. Andrews
By: James H. Andrews
Its: President

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME this day personally appeared JAMES H. ANDREWS, the President of WEST PENINSULAR TITLE COMPANY, who, after being duly sworn, stated that the allegations contained in the foregoing Complaint are true and correct to the best of his information and belief.

SWORN TO AND SUBSCRIBED before me this 11th day of March, 1988.

/s/ Vicki Rima
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE MY COMMISSION EXPIRES
MAR. 17, 1989 BONDED THROUGH
MUROSKI-ASHTON, INC.

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME this day personally appeared JAMES H. ANDREWS, the President of ABSOLUTE, INC., who, after being duly sworn, stated that the allegations contained in the foregoing

Complaint are true and correct to the best of his information and belief.

SWORN TO AND SUBSCRIBED before me this 11th day of March, 1988.

/s/ Vicki Rima
NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
AT LARGE MY COMMISSION EXPIRES
MAR. 17, 1989 BONDED THROUGH
MUROSKI-ASHTON, INC.

SMITH & WILLIAMS, P.A.

By: /s/ Samuel R. Mandelbaum
SAMUEL R. MANDELBAUM, ESQUIRE
100 South Ashley Drive
Suite 1170
Tampa, Florida 33602
(813) 223-1068
Florida Bar No. 270806
ATTORNEYS FOR PLAINTIFFS

COMPOSITE EXHIBIT "A"

Plat No. 1

COMPOSITE EXHIBIT "B"

Plat No. 3

COMPOSITE EXHIBIT "C"

Copies of the Deeds

COMPOSITE EXHIBIT "D"

Legal descriptions of each and every one of the STRIP PARCELS offered by PALM BEACH FARMS

EXHIBIT "E"

September 8, 1976 revocation of Alfred R. Cooper, successor in interest of PALMS BEACH FARMS

COMPOSITE EXHIBIT "F"

Letters from Carol A. Roberts, Chair
of the Board of County Commissioners

EXHIBIT "G"

Letter from Richard Graddock

EXHIBIT "H"

Letter from William J. Capito, Assistant County Attorney

EXHIBIT "I"

Ordinance No. 86-18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

FILED BY
1988 FEB 17

CASE NO. 88-8111
CIV-GONZALEZ

WEST PENINSULAR TITLE COMPANY, a Florida corporation, ABSOLUTE INC., a Florida corporation, and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,	
Plaintiffs,	
vs.	ANSWER AND AFFIRMATIVE DEFENSES
PALM BEACH COUNTY, a political subdivision of the State of Florida, and CAROL A. ROBERTS, Chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY,	
Defendants.	

DEFENDANTS answer the complaint as follows:

1. Defendants deny the allegations in paragraphs 1 through 3.

2. Defendants admit the allegations in the first part of paragraphs 4, 5, and 7;

Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the second part of paragraphs 4, 5, and 7.

3. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraphs 6, 8, 11, and 12.

4. Defendants admit the allegations in paragraph 9 and 10.

ANSWER TO GENERAL ALLEGATIONS

5. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraphs 13 through 25.

6. Defendants deny the allegations of paragraphs 26, 27, and 28.

7. Defendants admit the allegations in paragraph 29.

8. Defendants admit to the language in paragraphs 30 and 31 as appears to be set

forth in the ordinance, but deny the applicability and legal affect as to this Defendant.

9. Defendants deny the allegations of paragraph 34.

10. Defendants deny the allegations in paragraphs 32 and 33.

11. Defendants deny the allegations of paragraphs 35 and 36.

12. Defendants deny the allegations of paragraph 37.

ANSWER TO COUNT I

13. Defendants deny the allegations of paragraphs 38 through 40.

14. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 41.

ANSWER TO COUNT II

15. Defendants deny the allegations of paragraphs 42 through 44.

16. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 45.

ANSWER TO COUNT III

17. Defendants deny the allegations of paragraphs 46 through 52.

ANSWER TO COUNT IV

18. Defendants deny the allegations of paragraphs 53 through 59.

ANSWER TO COUNT V

19. Defendants deny the allegations of paragraphs 60 through 66.

ANSWER TO COUNT VI

20. Defendants deny the allegations of paragraphs 67 through 69.

21. Defendants are without sufficient knowledge or information to form a belief

as to the truth or falsity of the allegations contained in paragraph 70.

ANSWER TO COUNT VII

22. Defendants deny the allegations of paragraphs 71 through 76.

ANSWER TO COUNT VIII

23. Defendants deny the allegations of paragraphs 77 through 80, and paragraphs 82 through 92.

24. Defendants admit the allegations of paragraph 81.

25. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 84.

ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

26. Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the first and second general allegations in

paragraph 4 of Plaintiff's Motion for Leave to Amend Complaint.

27. Defendants deny the third general allegation in paragraph 4 of Plaintiff's Motion for Leave to Amend Complaint.

28. Defendants deny each and every allegation in Plaintiff's complaint that has not heretofore been admitted as set forth in Defendant's Answer.

AFFIRMATIVE DEFENSES

29. The plaintiffs have failed to state a claim upon which any relief sought by the Plaintiffs can be granted.

30. Plaintiffs lack standing to assert their claim either in a representative or individual capacity because Plaintiff failed to show the existence of actual or threatened injury which resulted from Defendant's conduct and affects Plaintiffs directly in the relation between the Plaintiff and the legal claim asserted.

31. The subject matter jurisdictional allegations attempting to gain diversity jurisdiction is improper because citizenship of an administrator or executor is insufficient to create diversity jurisdiction and the Personal Representative has no active role in the litigation.

32. The Plaintiffs are barred in asserting any claims or title to parcels of land that are the subject matter of this litigation in that they fail to file or otherwise make claim to said property within the one (1) year period prescribed by Florida Statute 177.055 (2). In the alternative Plaintiffs are barred under Florida Statute 95.11.

33. The Plaintiffs failed to comply with all conditions precedent to maintaining an action against this Defendant by failing to comply with the provisions of Florida Statute 768.28.

34. The plaintiffs name CAROL A. ROBERTS as a Defendant in this action in violation of Florida Statute 768.28 (9)(a) which precludes the naming of an officer, employee, or agent of the State or any of its subdivisions.

35. The Plaintiffs are barred by the Common Law Doctrine of Sovereign Immunity and the Eleventh Amendment to the U.S. Constitution in bringing this action.

36. The Plaintiffs have failed to assert their interest in a timely fashion and therefore are barred by the Common Law Doctrine of Laches and the Florida Statutes of Laches. Fla. Stat. Section 95.11(6).

37. Plaintiffs are barred from bringing this action both under the principles of res judicata and collateral estoppel since the State Law matters regarding the ownership rights to the parcels purported owned by Plaintiffs have been previously litigated in courts of competent jurisdiction.

38. Plaintiff failed to join the adjacent property owners as necessary and indispensable parties as required under Rule 19 of Federal Rules of Civil Procedure.

39. The Plaintiff have an adequate remedy at law and additionally have failed to exhaust administrative remedies.

40. Plaintiff are not entitled to relief, by way of compensatory damages, injunctive or declaratory relief, costs or award of attorneys' fees against this Defendant under the Federal Constitution or Statutes set forth in the Complaint including 42 U.S.C. Sections 1983, 1985, and 1988, 28 U.S.C. Sections 2201 and 2202, and 28 U.S.C. Sections 1331, 1334 (3) and (4).

41. Plaintiff,s service of process was insufficient to notify the Defendants of proceedings against them.

42. Plaintiffs process was insufficient to meet the summons and service requirements

as provided for in Rule 4 of Federal Rules of Civil Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer of Defendant has been furnished by U.S. Mail this 14th day of February, 1988 to SAMUEL R. MANDELBAUM, ESQ., 100 South Ashley Drive, Suite 1170, Tampa, Florida 33602 and JOAN E. O'DELL, ESQ., 703 South Lake Drive, Lantana, Florida 33462.

WILLIAM J. CAPITO, ESQ.
Assistant County Attorney
Post Office Box 1989
West Palm Beach, Fl. 33402
(407) 355-2249

BY: /s/ William J. Capito
WILLIAM J. CAPITO, ESQ.
Attorney for Defendants
Florida Bar No. 522783

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 88-8111-CIV-GONZALEZ

WEST PENINSULAR TITLE COMPANY, ABSOLUTE, INC. and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,

Plaintiffs,

vs.

PALM BEACH COUNTY, et al.,

Defendants.

_____/

RENEWED MOTION TO DISMISS
OR FOR A MORE DEFINITE STATEMENT
(Amended)

COMES NOW Defendants, PALM BEACH COUNTY and CAROL ROBERTS, by and through their undersigned attorney and pursuant to Federal Rules of Civil Procedure, Rule 12, moves this Honorable Court to dismiss the Plaintiffs' Amended Complaint as amended or alternatively to require the Plaintiffs to more definitely

state their claim on the grounds set forth below:

1. Plaintiffs are seeking compensatory, injunctive and declaratory relief under Federal Statute alleging that the Defendants have in some way violated their statutory and constitutional rights under the guise of the color of state law.

2. Plaintiffs have failed to state a claim upon which relief can be granted.

3. Plaintiffs are not owners of the property they purport to own in their Complaint and thus lacks standing to assert any claim either in a representative or individual capacity.

4. It is respectfully submitted that this Court lacks subject matter jurisdiction over this claim.

5. The Plaintiffs are barred in asserting any claim or title to parcels of land that are the subject matter of their Complaint in that they failed to file or otherwise make

a claim to said property within the period prescribed by Florida Statutes.

6. The Plaintiffs failed to comply with all conditions precedent to maintaining an action against these Defendants by failing to comply with the notice provisions of Florida Statute 768.28, particularly 768.28(6)(a).

7. The Plaintiffs name CAROL A. ROBERTS as a Defendant in this action. However, Florida Statute 768.28 precludes the naming of an officer, employee or agent of the State or any of its subdivisions and in addition Florida Statute 125.15 requires that County Commissioners shall be sued in the name of the County in which they are Commissioner and as such CAROL A. ROBERTS, as Chair to the Board of County Commissioners, is not a proper party to this action and must be dismissed as a party.

8. Plaintiffs are barred by the Common Law Doctrine of Sovereign Immunity and the Eleventh Amendment to the U.S. Constitution in bringing this action.

9. Plaintiffs have failed to assert their interest in a timely fashion and therefore are barred from doing so by the Doctrine of Laches.

10. Plaintiffs have an adequate remedy at law and therefore must be denied the equitable relief they seek and additionally, Plaintiffs have failed to exhaust administrative remedies clearly available to them.

11. Plaintiffs are barred from bringing this action both under the principles of res judicata and collateral estoppel.

12. The State law matters regarding the ownership rights to the parcels purported owned by the Plaintiffs have been previously litigated in courts of competent jurisdiction where the Plaintiff corporation and Estate of Alfred R. Cooper, as well as successors in interest to platted rights-of-way in Palm Beach Farms Plat #3 were present and the Court found in accord with long-standing, prevailing

Florida law that no ownership interests in fact existed.

13. That from the four corners of the Complaint as well as the exhibits attached thereto, which are thereby incorporated in the Complaint, it is absolutely clear that the operation of Palm Beach County Ordinance 86-18 does nothing more than vacate, abandon, annul, discontinue and close an public or private street, alleyway, right-of-way, or easement, or subdivision plat or a portion thereof,... and to renounce and disclaim any rights of the County and the public in and to any land in connection therewith... as authorized by Sections 336.09 - 336.12 and 177.101. And, in no way can such abandonment through the operation of said statute be construed as conveying any ownership interest in the parcels which are the subject matter of this litigation or any parcels abandon by its operation.

14. Plaintiffs have failed to join necessary and indispensable parties under Rule 19 of Federal Rules of Civil Procedure to wit:

the owners of parcel adjacent to the rights-of-way purported owned by the Plaintiffs, as under Florida law these owners exceed to the ownership of rights-of-way in fee when there is no express reservation in the plat or deeds, as is the case in Palm Beach Farms Plat #3.

15. All of the above is based upon and supported by a Memorandum of Law which was previously filed in this action supporting Defendant's prior Motion to Dismiss or for a More Definite Statement.

WHEREFORE, the Defendants respectfully request this Honorable Court to dismiss this action or in the alternative for the Court to require the Plaintiffs to draft a more definite statement, for costs, for attorney's fees and for such other and further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail this 20th day of December, 1988 to SAMUEL R. MANDELBAUM, ESQ., Smith & Williams, P.A., 100

South Ashley Drive, Suite 1170, Tampa, FL 33602.

WILLIAM J. CAPITO, ESQ.
Assistant County Attorney
Post Office Box 1989
West Palm Beach, FL 33402
407/820-2249

/s/ William J. Capito
WILLIAM J. CAPITO
Attorney for Defendants
Fla. Bar No. 522783

(vb/WEST PENINSULAR MOTION)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-8111-CIV-GONZALEZ

JAN 20 1989
Robert M. March
Clerk U.S. Dist. Ct.
S.D. of Fla. Ft. Laud.

WEST PENINSULAR TITLE COMPANY, ABSOLUTE, INC. and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,

Plaintiffs,

v.

PALM BEACH COUNTY, et al.,

Defendants.
_____/

O R D E R

THIS CAUSE has come before the court upon the defendants' Motion To Dismiss. The court has considered the Motion To Dismiss and, being otherwise duly advised, it is

ORDERED AND ADJUDGED as follows:

1. The court shall reserve ruling on the defendants' Motion To Dismiss at this time.

2. The parties may file Motions For Summary Judgment when and if they deem it appropriate.

3. The defendant's shall have twenty (20) days from the date of this Order to file an Answer to plaintiffs' Complaint, upon receipt of which this court shall set a conference scheduling discovery.

DONE AND ORDERED in chambers at Fort Lauderdale, Florida, this 20th day of January, 1989.

/s/ Jose A. Gonzalez, Jr.
UNITED STATES DISTRICT JUDGE
JOSE A. GONZALEZ, JR.

cc: all counsel

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

WEST PENINSULAR TITLE COMPANY, a Florida corporation, ABSOLUTE, INC., a Florida corporation, and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,

Plaintiffs,

-vs.-

Case No. 88-8111
CIV-GONZALEZ

PALM BEACH COUNTY, a political subdivision of the State of Florida, and and CAROL A. ROBERTS, Chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY,

Defendants.

_____/

JOINT PRETRIAL STIPULATION

COME NOW the parties in this cause, the plaintiffs and defendants, in accordance with Local Rule 14.D., and hereby submit their Joint Pretrial Stipulation, as follows:

1. The nature of the action.

Although the complaint alleges various causes of action and requests various remedies,

the parties stipulate that three (3) factual issues will be presented to the jury. Those are as follows:

(1) Whether the County accepted the offer to dedicated the strip parcels within a reasonable time after August 20, 1912?

(2) Whether the County accepted the offer to dedicate the strip parcels prior to September 9, 1976?

(3) And if the answer to questions number two (2) is a "yes", whether the County intended to limit its acceptance to specific roads that were accepted by resolution or improvement?

The parties further stipulate that in the event plaintiffs prevail on issue 1, 2, or 3 above, they shall be entitled to the remedies requested in the complaint. In the event that plaintiffs do not prevail as provided above, they shall be entitled to none of the relief requested in the complaint.

2. **The basis of federal jurisdiction.**

Jurisdiction is founded on diversity of citizenship in that one of the plaintiffs,

Marion H. Cooper, is a citizen of the State of Tennessee, and the defendants are located in Florida. The matter in controversy exceeds the sum of $10,000.00, exclusive of interest and costs. The plaintiffs' action also involves the provisions of 42 U.S.C. §§ 1983, 1985, and 1988, 28 U.S.C. §§ 2201 and 2202, as well s the Fifth and Fourteenth Amendments to the United States Constitution, and therefore presents a federal question. Neither party contests subject matter or *in personam* jurisdiction.

3. **The pleadings raising the issues.**

a. Verified Complaint and Demand for Jury Trial filed on March 14, 1988.

b. Amendment to Complaint found on pages 2 and 3 of Plaintiffs' Motion for Leave to Amend filed on October 21, 1988.

c. Answer and Affirmative Defenses to Verified Complaint and Demand for Jury Trial filed on February 14, 1989.

d. Reply to Answer and Affirmative Defenses filed on March 8, 1989.

e. Amendment to Verified Complaint and Demand for Jury Trial filed on May 24, 1991.

f. Answer to Amendment to Verified Complaint and Demand for Jury Trial filed on June 5, 1991.

4. **Undisposed of motions.**

a. Plaintiffs' Second Motion for Partial Summary Judgment, which was argued on May 10, 1991.

b. Defendants' Motion for Leave to File Memorandum of Law With Affidavits in Opposition, which was argued on May 10, 1991.

c. Plaintiffs' Motion to Strike Defendants' Amendment to Witness List.

d. Defendants' Motion to Dismiss, which was previously argued and the Court reserved ruling.

5. **Stipulated facts.**

a. At no time prior to September 9, 1976, (nor any time thereafter) did Palm Beach County expressly accept the offer to dedicate the strip parcels.

b. On September 9, 1976, the plaintiffs' predecessor in interest recorded its Notice of Withdrawal of Platted Roads, Streets, and Other Unexercised Rights.

c. Authenticity of listed exhibits, except as noted on Exhibit Lists.

d. All facts admitted in pleadings and responses to requests for admissions.

6. **Uncontested facts.**

a. On or about August 20, 1912, Palm Beach Farms Plat No. 3 was recorded in Plat Book 2, Pages 45-54, Public Records of Palm Beach County, Florida. The recording of the plat constituted an offer of dedication.

b. The plaintiffs' chain of title.

c. During the time period beginning August 20, 1912, and continuing through June 15, 1927, Palm Beach County did not by formal resolution, discussion, or reference, accept the offer of dedication of the strip parcels offered for dedication in Palm Beach Farms Plat No. 3.

d. The plaintiffs are the successors in interest to The Palm Beach Farms Company.

7. **Issues of fact which remain to be litigated at trial.**

a. Whether the County accepted the offer to dedicate the strip parcels within a reasonable time after August 20, 1912.

b. Whether the County accepted the offer to dedicate the strip parcels prior to September 9, 1976.

c. If acceptance occurred, whether the County intended to limit its acceptance to specific roads that were accepted by resolution or improvement.

8. **Issues of law on which there is agreement.**

a. The recording of the plat constituted an offer of dedication which the County had a duty to accept within a reasonable period of time and in no event later than September 9, 1976, when the offer was revoked

(to the extent that it had not previously been accepted).

9. **Issues of law which remain for determination by the Court.**

a. Issues raised in pending motions, except as otherwise provided in this Stipulation.

10. **Trial exhibits.**

a. Plaintiffs' Exhibit List is attached as Exhibit A.

b. Defendants' Exhibit List is attached as Exhibit B.

11. **Trial witnesses.**

a. Plaintiffs' Witness List is attached as Exhibit C.

b. Defendants' Witness List is attached as Exhibit D.

12. **Estimated trial time.**

The parties agree that the trial should last two days, including jury selection. However, in the event Steve Strona and James Snelgrove are permitted to testify, it is

anticipated that the trial will take three to four days.

13. **Attorney's fees.**

The parties agree that the issue of attorney's fees shall be resolved by post-trial motion.

WEST PENINSULAR TITLE COMPANY ABSOLUTE, INC. and MARION H. COOPER

By:_____\s_____
Gregory L. Williams, Esquire
Smith & Williams,
712 South Oregon Ave.
Tampa, Florida 33606
(813-253-5400
Attorneys for Plaintiffs

PALM BEACH COUNTY and CAROL A. ROBERTS, chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY

By:_____\s_____
Christopher D. Mauriello, Esquire
Palm Beach County Attorney's Off.
Palm Beach County Courthouse
West Palm Beach, Florida 33402
(407)355-2225
Attorneys for Defendants

Exhibit A

Plaintiffs' Exhibit List

1. Plat No. 3.

2. Notice of Withdrawal of Platted Roads, Streets, and Other Unexercised Rights, dated September 9, 1976.

3. Warranty deed recorded at O.R. Book 3435, Page 0631, together with related closing documents, closing statement, copy of checks and appraisal.

4. Quit-claim deed recorded at O.R. Book 1585, Page 505, and cancelled checks.

5. County resolutions.

6. All documents listed by defendants.

Exhibit B

Defendants' Exhibit List

1. All exhibits listed by plaintiff, West Peninsular, and not objected to by Palm Beach County.

2. Palm Beach Farms Plat No. 3 (composite exhibit).

3. 1926 Quit Claim Deed form Palm Beach Farms to Elmer J. Anderson.

4. Alleged revocation letter from Alfred R. Cooper dated September 8, 1976.

5. Palm Beach County Ordinance 71-3.

6. Florida Statute § 192.011 "Property Appraiser - Tax Roll" Statute

7. Real Property Deed on Parcel 77, Block, 54, dated 5/1/14 from Palm Beach Farms to Joseph Klinot.*

8. County Road Maintenance List dated 10/25/61, composite exhibit (approximately 40 pages)*.

9. County Road Maintenance List dated November, 1964, composite exhibit (approximately 40 pages).*

10. Map/Aerial of Palm Beach County, including area encompassing Plat No. 3 by Palm Beach Farms - demonstrative exhibit.*

11. All pleadings to this cause.

12. All depositions and exhibits attached thereto.

*Plaintiffs reserve the right to object to these documents which have not previously been provided by Defendants or reviewed by Plaintiffs or their counsel. It is anticipated that such objections will be withdrawn after the documents have been reviewed. Plaintiffs object to the introduction of statutes or ordinances into evidence.

Exhibit C

Plaintiffs' Witness List

1) James H. Andrews
2122 Carroll Place
Tampa, Florida 33612

2) Eugene Haber
1037 N.E. Street, Apt. 3
Lake Worth, Florida 33460

3) Steven M. Briggs
225 N.E. 28th Street
Boca Raton, Florida 33431

4) Richard A. Graddock
225 Sulky Way
West Palm Beach, Florida

5) Beverly Hansen
Engineering and Public Works
160 Australian Avenue
West Palm Beach, Florida

6) All witnesses listed by defendants

Exhibit D

Defendants' Witness List

1) Patricia A. Franklin
Manager, Land Acquisition
Engineering Services
160 Australian Avenue
West Palm Beach, Florida

2) John Carroll
Director, Public Works Operations
Engineering & Public Works
160 Australian Avenue
West Palm Beach, Florida

3) Alan A. Kurtis
Director, Land Development
Engineering & Public Works
160 Australian Avenue
West Palm Beach, Florida

4) Steve Strona*
3700 Belvedere Road, Bldg. C.
West Palm Beach, Florida

5) James Snelgrove*
3700 Belvedere Road, Bldg. C.
West Palm Beach, Florida

6) Brooks Shackley
Property Appraiser's Office
West Palm Beach, Florida

6) All witnesses listed by plaintiffs.

*Plaintiffs object to these witnesses as stated in Motion to Strike Amendment to Witness List. In addition, the testimony to be provided by these witnesses is cumulative of Patricia Franklin. See affidavits noted in Motion to Strike Amendment to Witness List.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

WEST PENINSULAR TITLE COMPANY, a Florida corporation, ABSOLUTE, INC., a Florida corporation and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,

Plaintiffs,

-vs-

Case No. 88-8111
CIV-GONZALEZ

PALM BEACH COUNTY, a political subdivision of the State of Florida, and and CAROL A. ROBERTS, Chair of the BOARD OF COMMISSIONERS OF PALM BEACH COUNTY,

Defendants.
_____/

VERDICT FORM

1. Did the County prove by clear, satisfactory, and unequivocal evidence that it accepted the offer of dedication within a reasonable time after August 20, 1912.

____ Yes____ No

If your answer to Question #1 was "No", do not answer Question #2 or #3. If your answer to Question #1 was "Yes", go to Question #2.

2. Did the County prove by clear, satsifactor, and unequivocal evidence that

it accepted the offer to dedicate the strip parcels prior to revocation of that offer?

____ Yes____ No

If your answers to Question #2 was 'No', do not answer Question #3. If your answer to Question #2 was 'Yes', go to Question #3.

3. Did the Plaintiffs prove that the County intended to limit its acceptance to specific strip parcels that were formally accepted by resolution or improvement?

____ Yes____ No

Read the note below; then the foreperson should sign and date the Verdict Form and return it to the Courtroom.

NOTE: **Before the foreperson signs and dates the Verdict Form below, please review the Verdict Form, along with the Jury's responses, and be sure that all instructions have been followed carefully.**

SO SAY WE ALL THIS 24 DAY OF JUNE, 1992.

/s/ Harold C. Jarvis, III
FOREPERSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Filed by D.C.
July 8 1992
A.G. Cheleotis
Clerk U.S. Dist. Ct.
S.D. of Fla. Ft. Laud.

WEST PENINSULAR TILE COMPANY, et al.,

PLAINTIFFS,

v.

CASE NO. 88-8111
CIV-GONZALEZ

PALM BEACH COUNTY, et al.,

DEFENDANTS.

ORDER

THIS CAUSE has come before the Court upon the defendants' request for entry of ruling on defendants' motion to dismiss.

The Court has reviewed the motion and the record, and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED that the defendants' motion to dismiss be DENIED.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 8th day of July, 1992.

/s/ Jose A. Gonzalez, Jr.
JOSE A. GONZALEZ, JR.
UNITED STATES DISTRICT JUDGE

cc: Sharon Pitts, for distribution to all parties.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

WEST PENINSULAR TITLE COMPANY, A Florida Corporation, ABSOLUTE, INC., a Florida Corporation, and MARION H. COOPER, as Personal Representative of ALFRED R. COOPER,

Plaintiffs,

vs.

CASE NO. 88-8111
CIV-GONZALEZ

PALM BEACH COUNTY, a political subdivision of the State of Florida, and CAROL A. ROBERTS, Chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY,

Defendant(s).

_____/

NOTICE OF APPEAL

Notice is hereby given that PALM BEACH COUNTY AND CAROL A. ROBERTS, as Chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, Defendants above-named, hereby appeal to the United States Court of Appeals for the Eleventh Circuit from the Final Order Awarding Attorneys Fees and Costs entered in this action on the 8th day of APRIL, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 21st day of APRIL, 1993, to Jeffrey A. Aman, Esq., Old Hyde Park, 712 S. Oregon Ave., Tampa, FL 33606-2569

/s/ Sharron M. Pitts
Sharron M. Pitts, Esq.
Assistant County Attorney
Florida Bar No. 0798850
301 North Olive Ave.
6th Floor
West Palm Beach, FL 33401
(407) 355-2249

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Ft. Lauderdale, FL 33301

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA.

CIVIL ACTION CASE NO. CL 94-1668 AE

GARY NIKOLITS, as Property
Appraiser of Palm Beach County,

Plaintiff,

vs.

WEST PENINSULAR TITLE COMPANY,
a Florida corporation; ABSOLUTE,
INC., a Florida corporation;
MARION H. COOPER, as Personal
Representative for Alfred R. Cooper;
J. CLINTON SCOTT, TRUSTEE; APPOLONIA
FARMS, LTD., a Florida Limited
Partnership; and BOYWIC FARMS, LTD.,
a Florida Limited Partnership,

Defendants.
_____/

J. CLINTON SCOTT, TRUSTEE; APPOLONIA FARMS,
LTD., a Bahamian corporation; BOYWIC FARMS,
LTD., a Florida limited partnership; and MECCA
FARMS, INC., a Florida corporation,

Crossplaintiffs,

vs.

WEST PENINSULAR TITLE COMPANY, a Florida
corporation; ABSOLUTE, INC., a Florida
corporation; and MARION N. COOPER, as Personal
Representative for ALFRED R. COOPER, and all
other parties claiming by, through, under or
against said Crossdefendants.

Crossdefendants.
_____/

J. CLINTON SCOTT, TRUSTEE; APPOLONIA FARMS, LTD., a Bahamian corporation; and BOYWIC FARMS, LTD., a Florida limited partnership; and MECCA FARMS, INC., a Florida corporation,

Third-Party Plaintiffs,

vs.

MINERAL LAND, INC.; TURTLE HOLDINGS, INC.; and PALM BEACH COUNTY; and any and all parties claiming by, through, under or against said Third-Party Defendants,

Third-Party Defendants.
_____/

SECOND AMENDED CROSSCLAIM AND THIRD-PARTY COMPLAINT

COME NOW, the Crossplaintiffs/Third Party Plaintiffs, J. CLINTON SCOTT, TRUSTEE ("SCOTT"), APPOLONIA FARMS, LTD., a Bahamian corporation ("APPOLONIA"), BOYWIC FARMS, LTD., a Florida limited partnership, ("BOYWIC") and MECCA FARMS, INC., a Florida corporation ("MECCA"), (and hereinafter referred to collectively as "the LANDOWNERS") , by and through undersigned counsel and sue the Crossdefendants, WEST PENINSULAR TITLE COMPANY, a Florida corporation ("WEST PENINSULAR"), ABSOLUTE, INC., a Florida corporation

("ABSOLUTE"), MARION N. COOPER, as Personal Representative for ALFRED R. COOPER ("COOPER"), and Third-Party Defendants, MINERAL LAND, INC. (MLI), TURTLE HOLDINGS, INC. ("TURTLE"), and PALM BEACH COUNTY ("PBC"), and any and all parties claiming by, through, under or against said Third Party Defendants, and state:

1. The Crossdefendants are parties to this action and are *sui juris.*

2. PBC is a governmental unit of the State of Florida.

3. MLI and TURTLE are Florida corporations, doing business in Palm Beach County, Florida.

4. This is an action to quiet title with respect to certain parcels of real property situated in Palm Beach County, Florida, pursuant to Florida Statutes Chapter 65.

5. The legal descriptions for said parcels are attached hereto as Exhibits "A-1" through "A-4".

6. THE PALM BEACH FARMS COMPANY ("PBFC") recorded Palm Beach Farms Plat No. 3 in the Public Records of Palm Beach County, Florida, on August 20, 1912, in Plat Book 2, Pages 45-54. Said document platted property owned by PBFC, and situated in Palm Beach County consisting of land in approximately 96 contiguous sections. The Plat divided the property into 96 blocks, each block being further subdivided into tracts of five or more acres. In addition, strips of land between the tracts or adjoining the outer boundaries thereof were reserved in the Plat for road, dyke and ditch purposes ("Road Strips"). Said Road Strips are described on the first page of the Plat as being of various widths, depending upon their location within the Plat. Said Road Strips were dedicated in the Plat for public use as public roads. A copy of Palm Beach Farms Company Plat No. 3 is attached hereto and made a part hereof as Exhibit "B".

6. The road dedication within the Plat aforementioned constituted an offer to dedicate

the Road Strips indicated on the Plat for use by the public.

7. By 1926, all tracts within Palm Beach Farms Co. Plat No. 3 had been conveyed out to third parties by PBFC. The Landowners are each the direct successors in interest to the original third-party purchasers of a number of tracts within Plat No. 3 from PBFC, which tracts are described more fully below.

8. All conveyances by PBFC of tracts within the Plat to third parties such as the predecessors of the Landowners in addition conveyed fee-simple ownership of the Road Strips to the purchasers of the tracts which abutted such Road Strips. With respect to interior Road Strips, fee-simple ownership of the Road Strips was conveyed to the purchasers of abutting tracts up to the center line of thereof. With respect to perimeter Road Strips, fee simple ownership of the entire width of that portion of the Road Strip which abutted each tract was conveyed to the purchaser of such tract.

9. The Landowners are the fee-simple owners of those Road Strips within Palm Beach Farms Co. Plat No. 3 which abut tracts owned by the Landowners. In addition, the Landowners, as the successors to the original purchasers of tracts within the Plat, possess private easement rights to use the Road Strips for ingress and egress purposes, and further possess private easement rights to have the Road Strips remain open in order that access to their tracts remains unimpeded.

10. Some or all of the Road Strips which were offered for dedication by virtue of the Plat were accepted by PBC, either formally or by public use, but have since been abandoned or vacated by PBC. In the alternative, some of the Road Strips have never been accepted by Palm Beach County. In the second alternative, the acceptance of some of the Road Strips by PBC constituted acceptance of all Road Strips as a matter of law. But in any event, PBC's acceptance of said Road Strips has been vacated or abandoned. With respect to all such Road

Strips, the owners of abutting tracts, such as the Landowners, have been freed of what, if any, public easement previously encumbered said Road Strips. With respect to all said Road Strips, the abutting tract owners, such as the Landowners, own said Road Strips in fee-simple, and free and clear of the public easements aforementioned.

11. Crossdefendants, and MLI and TURTLE, claim to be the successors in interest to PBFC with respect to what, if any, right, title or interest PBFC has with respect to the Road Strips by virtue of the following:

A. Quit-Claim Deed - PBFC to Elmer T. Anderson dated December 16, 1926, recorded June 15, 1927 in the Public Records of Palm Beach County, Florida, in Deed Book 384, Page 54.

B. Quit-Claim Deed - Elmer T. Anderson and Lillian H. Anderson, his wife, dated July 8, 1927 to the Hillsboro Company, and recorded July 22, 1927 in the Public Records of Palm Beach County, Florida, in Deed Book 416, Page 226.

C. Quit-Claim Deed - Hillsboro Company to Roy F. Anderson, dated September 7, 1938, and recorded February 7, 1939 in the Public Records of Palm

Beach County, Florida in Deed Book 580, Page 433.

D. Quit-Claim Deed - Roy F. Anderson to Alfred R. Cooper, dated April 25, 1967, and recorded in the Official Records of Palm Beach County, Florida, in O.R. Book 1535, Page 320, on May 26, 1967.

E. Quit-Claim Deed - Palm Beach Farms Company, a dissolved Colorado corporation, by Alfred R. Cooper, its successor, to West Peninsular Title Company, dated June 2, 1976, and recorded on June 2, 1976 in O.R. Book 2546, Page 1, in the Public Records of Palm Beach County, Florida.

F. Quit-Claim Deed - dated November 24, 1993, from the Palm Beach Farms Company, a dissolved Colorado corporation, to West Peninsular Title Company, recorded January 11, 1994 in O.R. Book 8072, Page 1681 in the Public Records of Palm Beach County, Florida.

G. Order dated December 30, 1992, entered in the case of West Peninsular Title Company, et al., v. Palm Beach County, et al., in the United States District Court, Southern District of Florida, Case No. 88-8111-CIV-GONZALEZ, a copy of which is attached hereto as Exhibit "C".

H. Quit-Claim Deed - dated November 15, 1994, from West Peninsular Title Company, a Florida corporation, to Absolute and West Peninsular Title Company, a Florida corporation, recorded November 17, 1994, in O.R. Book 8508, Page 1034, in the Public

Records of Palm Beach County, Florida; and Quit-Claim Deed - dated February 23, 1995, from West Peninsular Land Company, formerly known as Absolute and West Peninsular Title Company, a Florida corporation, to Absolute and West Peninsular Title Company, formerly known as West Peninsular Land Company, a Florida corporation, recorded February 24, 1995, in O.R. Book 8632, Page 1838, in the Public Records of Palm Beach County, Florida.

I. Quit-Claim Deed from West Peninsular Land Company, formerly known as Absolute and West Peninsular Title Company to West Peninsular Title Company, and Quit-Claim Deed from Absolute and West Peninsular Title Company, formerly known as West Peninsular Land Company to West Peninsular Title Company, each dated April 5, 1995 and recorded on April 7, 1995 in O.R. Book 8692, Page 839, and in O.R. Book 8692, Page 866, respectively, in the Public Records of Palm Beach County, Florida.

J. In addition, Absolute relies upon eleven Warranty Deeds from West Peninsular Title Company, each dated May 4, 1987, and each recorded on May 14, 1987 in the Public Records of Palm Beach County, Florida, in Official Record Book 5279, Pages 1270, 1271, 1272, 1273, 1783, 1784, 1785, 1790, 1791, 1792 and 1793, respectively. Absolute also relies upon nine Warranty Deeds from Mineral Land, Inc., each dated May 4, 1987, and each recorded on May 14, 1987 in the Public Records of Palm Beach County, Florida, in Official Record Book 5279, Pages 1267, 1268, 1269,

1278, 1279, 1281, 1283, 1288 and 1289, in the Public Records of Palm Beach County, Florida.

K. In addition, MLI claims an interest based upon four Quit-Claim Deeds from West Peninsular Title Company dated June 14, 1985, and recorded June 19, 1985 in Official Record Book 4575, Pages 1971, 1975, 1977 and 1979, in the Public Records of Palm Beach County, Florida.

12. On December 16, 1926, when PBFC executed its Quit-Claim Deed referred to in paragraph 11(A), above, in favor of Elmer T. Anderson, PBFC possessed no right, title or interest whatsoever in any of the Road Strips, said strips having been conveyed by construction to the purchasers of all abutting tracts within the Plat, as described above. Thus, PBFC possessed no interest to convey, and said Quit-Claim Deed is, therefore, ineffective to convey any right, title or interest in any of the Road Strips. The subsequent Deeds referred to in paragraphs 11(B) through (E), and (H) through (K), inclusive, above, are therefore similarly ineffective. PBFC did not subsequently obtain any interest in the strips,

thus rendering its subsequent Quit-Claim, described in Paragraph 11(F), ineffective as well. Further, the Crossdefendants and MLI and TURTLE, have failed to institute suit with respect to their claims to the Road Strips by July 1, 1973, thus rendering said claims void and unenforceable pursuant to Florida Statutes §177.085(2). The claims of the Crossdefendants, MLI and TURTLE are further barred by virtue of Florida Statutes §95.231.

13. Although title to the Road Strips is vested solely and exclusively in the Landowners and other owners of tracts within the Plat, the Crossdefendants and MLI and TURTLE have nevertheless asserted claims to ownership of the strips, and have embarked upon a course of conduct intended to challenge the interests of tract owners with respect to the abutting strips, including the interests of the Landowners.

14. Specifically, the Crossdefendants filed suit versus Palm Beach County in the case of West Peninsular Title Company, et al., v.

Palm Beach County, et al., in the United States District Court, Southern District of Florida, Case No. 88-8111-CIV-GONZALEZ, wherein the Crossdefendants asserted a claim of fee-simple ownership with respect to a number of the Road Strips including certain strips which abut the Landowners' property. The Crossdefendants failed to name the Landowners, or any other tract owners within the Plat, as defendants in said action. While an order (referred to in Paragraph 11(G), above) was entered therein declaring the Crossdefendants claim of title to the Road Strips to be superior to that of Palm Beach County, the Landowners and others similarly situated were deprived of the right to participate and otherwise defend their superior title to the Road Strips. As such, said order did not adjudicate the ownership rights of the abutting tract owners, such as the Landowners, with respect to the Road Strips. Accordingly, in reviewing the order aforementioned, the United States Eleventh Circuit Court of Appeals in case numbers 93-

4104 and 93-4449 held that said order was of no force or effect whatsoever with respect to the interests of tract owners such as the Landowners, and in no way served to quiet title in the name of the Crossdefendants with respect to the claims of the Landowners.

15. Crossdefendants' counsel in closing arguments in the trial of the action against Palm Beach County aforementioned, and during oral arguments on the appeal of said case, represented that said action concerned only the rights of the Crossdefendants and Palm Beach County, and would not affect the rights of abutting landowners. However, subsequent to the entry of the order therein in their favor, the Crossdefendants have nonetheless asserted a claim of ownership with respect to all such Road Strips which they assert to be superior to the rights therein of abutting owners such as the Landowners. The Crossdefendants have asserted the order entered in said lawsuit as proof of their claimed ownership.

16. Further, the Crossdefendants have demanded that the Plaintiff herein, GARY NIKOLITS, the Palm Beach County Property Appraiser, add the Crossdefendants' names to the tax rolls of Palm Beach County with respect to all Road Strips which were the subject matter of the lawsuit with Palm Beach County, in direct contradiction to the Landowners' fee-simple ownership thereof. It was this demand which, in part, prompted the Plaintiff to file suit herein for declaratory relief.

17. Finally, the Crossdefendants and MLI and TURTLE have threatened to take possession and control of the Road Strips, and to erect fences, plant trees or otherwise create barricades within the strips in order to deny access to the Landowners to those portions of the Landowners' property which require travel across the strips for access. Upon information and belief, the Crossdefendants are actively attempting to convey their alleged interest in the strips to third parties unless the Landowners and others similarly situated

"purchase" the strips back from the Crossdefendants. The Landowners have been advised that one or more of the Crossdefendants have conveyed or attempted to convey an interest or option in the Road Strips owned by Crossplaintiff, BOYWIC, to TURTLE. BOYWIC has been contacted by representatives of TURTLE, who have threatened to block BOYWIC's access to certain of its property across certain of the Road Strips.

18. The acts of the Crossdefendants and MLI and TURTLE, aforementioned, constitute clouds upon the Landowners' respective interests in the Road Strips.

COUNT I - QUIET TITLE
SCOTT v. WEST PENINSULAR TITLE COMPANY, et al.

SCOTT realleges and readopts Paragraphs 1 through 18 as if specifically set forth herein.

19. Crossplaintiff, J. CLINTON SCOTT, TRUSTEE, is the owner of the following property located within Palm Beach Farms Plat No. 3:

> Tracts 65 - 70, 91-102, 123-128, inclusive, Block 70, Palm Beach Farms Company Plat No. 3, according to the Plat thereof on file in the

office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive;

Together with that 30 foot wide road strip lying in Block 70, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive, bounded as follows: on the North by the South line of Tracts 91 - 96, inclusive; on the East by the northerly prolongation of the East line of Tract 97; on the South by the North line of Tracts 97 - 102, inclusive; on the West by the northerly prolongation of the West line of Tract 102;

And, the West half of that 50 foot wide road strip lying between Blocks 70 and 71, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive, said 50 foot wide road strip bounded as follows: on the North by the easterly prolongation of the North line of Tract 65, Block 70; on the East by the West line of Tracts 75, 76, 105, 106, and the northerly prolongation of the West line of said Tract 105, Block 71; on the South by the easterly prolongation of the South line of Tract 128, Block 70; on the West by the East line of Tracts 65, 96, 97, 128, and the northerly

prolongation of the East line of said Tract 97, Block 70.

(Hereinafter referred to as "the Scott Property".)

20. J. CLINTON SCOTT, TRUSTEE, deraigns title with respect to the Scott Property as follows:

A. Warranty Deed - Harry M. Biffar, Jr., individually and as Trustee, recorded on February 16, 1979, in O.R. Book 3009, Page 1513;

B. Warranty Deed - Harry M. Biffar, Jr., individually and as Trustee, recorded on February 20, 1980, in O.R. Book 3234, Page 1569;

C. Warranty Deed - Harry M. Biffar, Jr., individually and as Trustee, recorded on March 2, 1981, in O.R. Book 3472, Page 1442;

all in the Public Records of Palm Beach County, Florida. Copies of these deeds are attached hereto as Exhibit "C-1".

21. The Crossdefendants, and MLI claim some right, title or interest in the Road Strips described in Paragraph 19, above, by virtue of the conveyances and other documents referred to above. Said claims are void and invalid, and constitute clouds on SCOTT's title

with respect to said Road Strips. SCOTT is entitled to the entry of judgment forever quieting his title with respect to said Road Strips. A sketch which depicts the location of the SCOTT Property within Palm Beach Farms Co. Plat No. 3 is attached hereto as Exhibit "D". The Road Strips at issue have been highlighted in orange thereon.

WHEREFORE, SCOTT demands judgment against the Crossdefendants and MLI forever removing said clouds from his title to the SCOTT Property and quieting the title thereto in him, and to the exclusion of the Crossdefendants and MLI and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT II - QUIET TITLE
APPOLONIA FARMS, LTD., v.
WEST PENINSULAR TITLE COMPANY, et al.

APPOLONIA realleges and readopts Paragraphs 1 through 18 as if specifically set forth herein.

22. Crossplaintiff, APPOLONIA FARMS, LTD., a Bahamian corporation, is the owner of the following property located within Palm Beach Farms Plat No. 3:

> Tracts 1 - 64, inclusive, Block 70, and Tracts 1 - 60, inclusive, Block 71, Palm Beach Farms Company Plat No. 3 according to the Plat thereof, on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive;
>
> Together with that 30 foot wide road strip lying in Blocks 70 and 71, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the South line of Tracts 17 - 32 inclusive, Block 70, the South line of Tracts 16 - 30, Block 71, and the easterly prolongations of the South lines of Tract 24, Block 70, and Tract 23, Block 71; on the East by the southerly prolongation of the East line of Tract 30, Block 71; on the South by the North line of Tracts 31 - 45, Block 71, the North line of Tracts 33 - 48, Block 70, and the westerly prolongations of the North lines of Tract 37, Block 71, and Tract 40, Block 70; on the West by the northerly prolongation of the West line of Tract 48, Block 70;

And; That 30 foot wide road strip lying in Block 70, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the easterly prolongation of the North line of Tract 9; on the East by the West line of Tracts 8, 25, 40, 57, and the southerly prolongation of the West line of Tract 25; on the South by the westerly prolongation of the South line of Tract 57; on the West by the East line of Tracts 9, 24, 41, 56, and the northerly prolongation of East line of Tract 41;

And; That 30 foot wide road strip lying in Block 71, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the easterly prolongation of the North line of Tract 8; on the East by the West line of Tracts 7, 24, 37, 54, and the southerly prolongation of the West line of Tract 24; on the South by the westerly prolongation of the South line of Tract 54; on the West by the East line of Tracts 8, 23, 38, 53, and the northerly prolongation of East line of Tract 38;

And; That 50 foot wide road strip lying between Blocks 70 and 71, PALM BEACH FARMS COMPANY PLAT NO. 3,

according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the easterly prolongation of the North line of Tract 1, Block 70; on the East by the West line of Tracts 15, 16, 45, 46, and the southerly prolongation of the West line of Tract 16, Block 71; on the South by the westerly prolongation of the South line of Tract 46, Block 71; on the West by the East line of Tracts 1, 32, 33, 64, and the northerly prolongation of the East line of Tract 33, Block 70.

(Hereinafter referred to as "the Appolonia Property".)

23. APPOLONIA FARMS, LTD., a Bahamian corporation, deraigns title with respect to the Appolonia Property as follows:

A. Warranty Deed - Kerns, Inc., Corp., an Illinois corporation, to J. Clinton Scott, Trustee, recorded November 26, 1979 in O.R. Book 3181, Page 149;

B. Warranty Deed - J. Clinton Scott, individually and as Trustee to Appolonia Investments, Ltd., a Bahamian corporation, dated November 26, 1979, and recorded on that date in O.R. Book 3181, Page 158;

all in the Public Records of Palm Beach County, Florida. Copies of these deeds are attached hereto as Exhibit "D-1".

24. The Crossdefendants and MLI claim some right, title or interest in the Road Strips described in Paragraph 22 above, by virtue of the conveyances and other documents referred to above. Said claims are void and invalid, and constitute clouds on APPOLONIA's title with respect to said Road Strips. APPOLONIA is entitled to the entry of judgment forever quieting its title with respect to said Road Strips. A sketch which depicts the location of the APPOLONIA Property within Palm Beach Farms Co. Plat No. 3 is attached hereto as Exhibit "E". The Road Strips at issue have been highlighted in orange thereon.

WHEREFORE, APPOLONIA demands judgment against the Crossdefendants and MLI forever removing said clouds from its title to the APPOLONIA Property and quieting the title thereto in it, and to the exclusion of the Crossdefendants and all parties claiming by,

through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT III - QUIET TITLE
BOYWIC FARMS, LTD., v.
WEST PENINSULAR TITLE COMPANY, et al.

BOYWIC realleges and readopts Paragraphs 1 through 18 as if specifically set forth herein.

25. Crossplaintiff, BOYWIC FARMS, LTD., a Florida limited partnership, is the owner of the following property located within Palm Beach Farms Plat No. 3:

> Tracts 62, 63, 92 - 95, 110 - 125, inclusive, Block 45, Tracts 55 - 118, inclusive, Block 46, Tracts 1 - 32, inclusive, Block 50, and Tracts 1 - 30, inclusive, Block 51, Palm Beach Farms Company Plat No. 3 according to the Plat thereof, on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive;
>
> Together with that 30 foot wide road strip lying in Blocks 45 and 51, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm

Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive bounded as follows: on the North by the easterly prolongation of the North line of Tract 117, Block 45; on the East by the West line of Tract 118, Block 45, and West line of Tracts 8 and 23, Block 51; on the South by the easterly prolongation of the South line of Tract 22, Block 51; on the West by the East line of Tracts 9 and 22, Block 51, and the East line of Tract 117, Block 45; LESS the 50 foot wide road strip lying between Blocks 45 and 51.

And; That 30 foot wide road strip lying in Blocks 46 and 50, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive, bounded as follows: on the North by the easterly prolongation of the North line of Tract 63, Block 46; on the East by the West line of Tracts 62, 79, 94, 111, and the southerly prolongation of the West line of Tract 79, all in Block 46, and the West line of Tracts 8 and 25, Block 50; on the South by the easterly prolongation of the South line of Tract 24, Block 50; on the West by the East line of Tracts 63, 78, 95, 110, and the southerly prolongation of the East line of Tract 78, all in Block 46, and the East line of Tracts 9 and 24, Block 50; LESS that 50 foot wide road strip lying between Blocks 46 and 50.

And; That 30 foot wide road strip lying in Blocks 45 and 46, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive, bounded as follows: on the North by the South line of Tracts 92 and 93, and the easterly prolongation of the south line of Tract 93, Block 45, Tracts 71 - 86 inclusive, and the easterly prolongation of the South line of Tract 78, Block 46; on the East by the southerly prolongation of the East line of Tract 86, Block 46; on the South by the North line of Tracts 87 - 102 inclusive, and the westerly prolongation of the North line of Tract 94, Block 46, and the North line of Tracts 94 and 95, Block 45; on the West by the northerly prolongation of the West line of Tract 95, Block 45;

And; That 25 foot wide strip lying along the East line of Block 46, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive, bounded as follows: on the North by the easterly prolongation of the North line of Tract 55, Block 46; on the East by the West line of the "School Section 16, T. 45 S., R. 42 E." Tract; on the South by the easterly extension of the South line of Tract 118, Block 46; on the West by the East line of Tracts 55, 86, 87, 118, and

the southerly prolongation of the East line of 86, Block 46;

And; The West half of that 50 foot wide road strip lying between Blocks 49 and 50, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive, said 50 foot wide road strip bounded as follows: on the North by the easterly prolongation of the North line of Tract 1, Block 50; on the East by the West line of Tract 16, Block 49; on the South by the easterly prolongation of the South line of Tract 32, Block 50; on the West by the East line of Tracts 1 and 32, Block 50;

And; That 50 foot wide road strip lying along the East line of Blocks 45 and 51, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the westerly prolongation of the North of Tract 70, Block 46; on the East by the West line of Tracts 70, 71, 102, 103, and the southerly prolongation of the West line of Tract 71, Block 46, and the West line of Tracts 16 and 17, Block 50; on the South by the westerly prolongation of the South line of Tract 17, Block 50; on the West by the East line of Tracts 62, 93, 94, 125, and the southerly prolongation of he East line of

Tract 93, Block 45, and the East line of Tracts 1 and 30, Block 50; LESS the 50 foot wide road strip lying along the South line of Blocks 45 and 46.

(Hereinafter referred to as "the Boywic Property".)

26. BOYWIC FARMS, LTD., a Florida limited partnership, deraigns title with respect to the Boywic Property as follows:

All or substantially all of the land owned by Boywic was acquired by Boywic Farms, Ltd., by way of the following conveyances:

A. Warranty Deed - Carl Padgett and Teresa Padgett, dated October 9, 1953, and recorded October 27, 1953 in Deed Book 1034, Page 104;

B. Warranty Deed - J. A. Lamb and Cassie P. Lamb, dated July 18, 1953, and recorded August 5, 1953 in Deed Book 1026, Page 522;

C. Warranty Deed - John A. Smith , dated July 29, 1959, and recorded July 30, 1959 in O.R. Book 382, Page 591;

D. Quit-Claim Deed - Denelse Franklin, dated June 2, 1969, and recorded June 16, 1969 in O.R. Book 1729, Page 1483;

E. Quit-Claim Deed - J. C. Hughes and Teresa E. Hughes, dated June 10, 1969, and recorded November 12, 1980 in O.R. Book 3403, Page 1212;

F. Quit-Claim Deed - Alan C. Cox, dated June 12, 1969 and recorded June 16, 1969 in O.R. Book 1729, Page 1482;

G. Quit-Claim Deed - B. R. Taylor and Elva Taylor, dated July 30, 1969 and recorded August 22, 1969 in O.R. Book 1745, Page 975;

H. Quit-Claim Deed - J.C. Hughes and Teresa E. Hughes, dated July 30, 1969, and recorded August 22, 1969 in O.R. Book 1745, Page 974;

I. Quit-Claim Deed - McCarthy Crenshaw, as successor Trustee in Bankruptcy of the property of Machek Farms, Inc., Bankrupt, dated January 19, 1976, and recorded January 26, 1976 in O.R. Book 2501, Page 58;

J. Warranty Deed - Judson George Laraway, Adelaide K. Schliching, Kathleen K. Moorefield, Matthew C. Kaar, and Hugh R. Kaar, dated November 3, 1982, and recorded December 30, 1982 in O.R. Book 3852, Page 1064;

K. Special Warranty Deed - George Weaver, dated May 27, 1986, and recorded June 9, 1986 in O.R. Book 4901, Page 1052;

L. Warranty Deed - Thomas V. Dailey as Bishop of the Diocese of Palm Beach, dated October 13, 1986, and recorded October 23, 1986 in O.R. Book 5049, Page 1089;

M. Special Warranty Deed from Boywic Farms, Inc. To Boywic Farms, Ltd., dated December 20, 1985 and recorded in the Public Records of Palm Beach County, Florida on December 22, 1985

in Official Record Book 5114, Page 587;

all in the Public Records of Palm Beach County, Florida. Copies of these deeds are attached hereto as Exhibit "E-1".

27. The Crossdefendants and MLI and TURTLE claim some right, title or interest in the Road Strips described in Paragraph 25, above, by virtue of the conveyances and other documents referred to above. Said claims are void and invalid, and constitute clouds on BOYWIC's title with respect to said Road Strips. BOYWIC is entitled to the entry of judgment forever quieting its title with respect to said Road Strips. A sketch which depicts the location of the BOYWIC Property within Palm Beach Farms Co. Plat No. 3 is attached hereto as Exhibit "F". The Road Strips at issue have been highlighted in orange thereon.

WHEREFORE, BOYWIC demands judgment against the Crossdefendants and MLI and TURTLE, forever removing said clouds from its title to the

BOYWIC Property and quieting the title thereto in it, and to the exclusion of the Crossdefendants and MLI and TURTLE and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT IV - QUIET TITLE BY VIRTUE OF ADVERSE POSSESSION - SCOTT v. WEST PENINSULAR TITLE COMPANY, et al.

SCOTT realleges and readopts paragraphs 1 through 3, and 5 through 8, and 11 through 21, as if specifically set forth herein.

28. This is an action to quiet title to real property pursuant to adverse possession under color of title.

29. SCOTT and his predecessors in title have entered into possession of the Road Strips described in Paragraph 19, above, under a claim of title exclusive to any other right continuously for a period in excess of seven (7) years.

30. Said right is founded on certain instruments, to wit, the Deeds described in

Paragraph 20, above, together with all prior conveyances with respect to the real property described therein, emanating from PBFC to the original purchasers of said tracts forward.

31. Said possession by SCOTT and his predecessors in interest has been continuous, open, obvious and exclusive.

32. Said property has been usually cultivated for a period in excess of seven (7) years.

33. Said possession has been adverse to any claim of right, title or interest in said property on the part of the Crossdefendants and MLI herein and any and all parties claiming by, through, under or against same.

34. By virtue of the aforementioned facts and circumstances, SCOTT is entitled to a judgment for adverse possession with respect to the Road Strips aforementioned, pursuant to Florida Statutes §95.16.

WHEREFORE, SCOTT demands judgment against the Crossdefendants and MLI, forever removing said clouds from his title to the SCOTT

Property and quieting the title thereto in him, and to the exclusion of the Crossdefendants and MLI, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT V - QUIET TITLE BY VIRTUE OF ADVERSE POSSESSION - APPOLONIA v. WEST PENINSULAR TITLE COMPANY, et al.

APPOLONIA reallege and readopts Paragraphs 1 through 3, and 5 through 8, 11 through 18, and 22 and 23, as if specifically set forth herein.

35. This is an action to quiet title to real property pursuant to adverse possession under color of title.

36. APPOLONIA and its predecessors in title have entered into possession of the Road Strips described in Paragraph 22, above, under a claim of title exclusive to any other right continuously for a period in excess of seven (7) years.

37. Said right is founded on certain instruments, to wit, the Deeds described in Paragraph 23, above, together with all prior conveyances with respect to the real property described therein, emanating from PBFC to the original purchasers of said tracts forward.

38. Said possession by APPOLONIA and its predecessors in interest has been continuous, open, obvious and exclusive.

39. Said property has been usually cultivated for a period in excess of seven (7) years.

40. Said possession has been adverse to any claim of right, title or interest in said property on the part of the Crossdefendants and MLI, and any and all parties claiming by, through, under or against same.

41. By virtue of the aforementioned facts and circumstances, APPOLONIA is entitled to a judgment for adverse possession with respect to the Road Strips aforementioned, pursuant to Florida Statutes §95.16.

WHEREFORE, APPOLONIA demands judgment against the Crossdefendants and MLI, forever removing said clouds from its title to the APPOLONIA Property and quieting the title thereto in it, and to the exclusion of the Crossdefendants and MLI, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT VI - QUIET TITLE BY VIRTUE OF ADVERSE POSSESSION - BOYWIC v. WEST PENINSULAR TITLE COMPANY, et al.

BOYWIC realleges and readopts Paragraphs 1 through 8, 11 through 18, 25 and 26, as if specifically set forth herein.

42. This is an action to quiet title to real property pursuant to adverse possession under color of title.

43. BOYWIC and its predecessors in title have entered into possession of the Road Strips described in Paragraph 25, above, under a claim of title exclusive to any other right

continuously for a period in excess of seven (7) years.

44. Said right is founded on certain instruments, to wit, the Deeds described in Paragraph 26, above, together with all prior conveyances with respect to the real property described therein, emanating from PBFC to the original purchasers of said tracts forward.

45. Said possession by BOYWIC and its predecessors in interest has been continuous, open, obvious and exclusive.

46. Said property has been usually cultivated for a period in excess of seven (7) years.

47. Said possession has been adverse to any claim of right, title or interest in said property on the part of the Crossdefendants, and MLI and TURTLE and any and all parties claiming by, through, under or against same.

48. By virtue of the aforementioned facts and circumstances, BOYWIC is entitled to a judgment for adverse possession with respect to

the Road Strips aforementioned, pursuant to Florida Statutes §95.16.

WHEREFORE, BOYWIC demands judgment against the Crossdefendants and MLI and TURTLE, forever removing said clouds from its title to the BOYWIC Property and quieting the title thereto in it, and to the exclusion of the Crossdefendants and MLI and TURTLE, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT VII - QUIET TITLE
SCOTT v. PALM BEACH COUNTY

SCOTT realleges and readopts Paragraphs 1 through 8, and 11 through 21 as if specifically set forth herein.

49. Because the offer of dedication of the Road Strips contained in Palm Beach Farms Plat No. 3 was either not accepted by PBC, or in the alternative, because PBC's acceptance thereof has been either vacated or abandoned, SCOTT's fee-simple title to the underlying land

with respect to all Road Strips within the SCOTT Property has been freed from what, if any, public easement in favor of PBC said Road Strips were encumbered by as a result of the offer of dedication contained in the Plat.

50. Said Road Strips have not been used, controlled, maintained or possessed by PBC for a period in excess of ten (10) years. Accordingly, SCOTT is entitled to have PBC execute and deliver a Quit-Claim Deed with respect to all said Road Strips to him, pursuant to Florida Statutes §255.22, and Palm Beach County Ordinance 86-18.

51. The Order referred to in Paragraph 11(G), above, *inter alia*, prohibits PBC from taking any action under Ordinance 86-18 with respect to all property described in said Order, including the Road Strips aforementioned. The claim, if any, of PBC with respect to said Road Strips constitutes a cloud on SCOTT's title with respect thereto.

WHEREFORE, SCOTT demands judgment against PBC forever removing said cloud from his title to the SCOTT Property and quieting the title thereto in him, and to the exclusion of PBC, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT VIII - QUIET TITLE
APPOLONIA v. PALM BEACH COUNTY

APPOLONIA realleges and readopts paragraphs 1 through 8, 11 through 18, and 22 through 24 as if specifically set forth herein.

52. Because the offer of dedication of the Road Strips contained in Palm Beach Farms Plat No. 3 was either not accepted by PBC, or in the alternative, because PBC's acceptance thereof has been either vacated or abandoned, APPOLONIA's fee-simple title to the underlying land with respect to all Road Strips within the APPOLONIA Property has been freed from what, if any, public easement in favor of PBC said Road

Strips were encumbered by as a result of the offer of dedication contained in the Plat.

53. Said Road Strips have not been used, controlled, maintained or possessed by PBC for a period in excess of four (4) years. Accordingly, APPOLONIA is entitled to have PBC execute and deliver a Quit-Claim Deed with respect to all said Road Strips to him, pursuant to Florida Statutes § 255.22, and Palm Beach County Ordinance 86-18.

54. The Order referred to in Paragraph 11(G), above, inter alia, prohibits PBC from taking any action under Ordinance 86-18 with respect to all property described in said Order, including the Road Strips aforementioned. The claim, if any, of PBC with respect to said Road Strips constitutes a cloud on APPOLONIA's title with respect thereto.

WHEREFORE, APPOLONIA demands judgment against PBC forever removing said cloud from its title to the APPOLONIA Property and quieting the title thereto in him, and to the exclusion of PBC, and all parties claiming by,

through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT IX - QUIET TITLE
BOYWIC v. PALM BEACH COUNTY

BOYWIC realleges and readopts Paragraphs 1 through 18, and 25 through 27 as if specifically set forth herein.

55. Because the offer of dedication of the Road Strips contained in Palm Beach Farms Plat No. 3 was either not accepted by PBC, or in the alternative, because PBC's acceptance thereof has been either vacated or abandoned, BOYWIC's fee-simple title to the underlying land with respect to all Road Strips within the BOYWIC Property has been freed from what, if any, public easement in favor of PBC said Road Strips were encumbered by as a result of the offer of dedication contained in the Plat.

56. Said Road Strips have not been used, controlled, maintained or possessed by PBC for a period in excess of ten (10) years.

Accordingly, BOYWIC is entitled to have PBC execute and deliver a Quit-Claim Deed with respect to all said Road Strips to him, pursuant to Florida Statutes § 255.22, and Palm Beach County Ordinance 86-18.

57. The Order referred to in Paragraph 11(G), above, inter alia, prohibits PBC from taking any action under Ordinance 86-18 with respect to all property described in said Order, including the Road Strips aforementioned. The claim, if any, of PBC with respect to said Road Strips constitutes a cloud on BOYWIC's title with respect thereto.

WHEREFORE, BOYWIC demands judgment against PBC forever removing said cloud from its title to the BOYWIC Property and quieting the title thereto in him, and to the exclusion of PBC, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT X - INJUNCTIVE RELIEF - BOYWIC AND MECCA v. WEST PENINSULAR, ABSOLUTE, COOPER, MLI and TURTLE

BOYWIC and MECCA reallege and readopt Paragraphs 1 through 16, 19, and 22 as if specifically set forth herein.

58. Art Scroggie, a representative of TURTLE, has notified BOYWIC of its intent to utilize the Road Strips within BOYWIC's property for "tree farming", despite the fact that the issue of ownership as between BOYWIC and WEST PENINSULAR and ABSOLUTE has not yet been resolved.

59. TURTLE's attempt to begin "tree farming" operations on the Road Strips will interfere with the farming operations currently being carried on the Boywic Property by MECCA, the existing tenant of the entire Boywic Property pursuant to a lease with BOYWIC. TURTLE's use of the Road Strips will cause damage to the crops that are currently growing on the Boywic Property because the Road Strips do not run exactly within the unpaved roads that provide ingress and egress throughout the property. Moreover, the operation of a tree

farm on strips of land that are no more than thirty (30) feet in width will, in all likelihood, have to be irrigated by hand as there is simply not enough land within these Road Strips to install an irrigation system. The inconvenience that TURTLE'S tree farming activities will have to endure until title to the Road Strips is conclusively resolved as between Crossdefendants, MLI and TURTLE on the one hand, and BOYWIC and MECCA on the other, is trivial compared with the enormous devastation that would be caused to the property (both the farming activities currently being carried out by MECCA as well as the drainage and irrigation systems that are essential to the continued operation of the property) if TURTLE is allowed to begin its tree farming activities.

60. Even if Crossdefendants, MLI and TURTLE were to somehow ultimately prevail in terms of the party that is to be listed as the owner of record of the Road Strips, the Crossdefendants, MLI and TURTLE would have to keep the Road Strips clear so as to provide for

the ingress and egress of adjacent landowners. The cultivation of a tree farm within these Road Strips would preclude the adjacent landowners from being able to use these Road Strips for adequate ingress and egress. As a result, even if Crossdefendants, MLI and TURTLE are somehow able to establish title to the Road Strips, they will not have the authority to permit TURTLE or any other party to interfere with the ingress and egress of neighboring landowners by permitting a tree farm or any other type of commercial activity in the Road Strips.

61. The Crossdefendants', and "MLI's" and TURTLE's threats to enter the Boywic Property and deny BOYWIC and MECCA use and possession thereof is completely without legal justification or support.

WHEREFORE, BOYWIC and MECCA respectfully request this Court to issue a temporary and permanent injunction enjoining Crossdefendants and MLI and TURTLE and their agents, employees, successors, assigns, attorneys and those

persons in active concert or participation with them from entering upon the lands owned by BOYWIC and leased to MECCA to engage in agricultural, excavatory or other commercial activities on the Road Strips, together with the award of all costs incurred herein and such other relief as the Court deems just and proper.

COUNT XI - QUIET TITLE
MECCA v. WEST PENINSULAR TITLE COMPANY, et al.

MECCA realleges and readopts Paragraphs 1 through 18 as if specifically set forth herein.

62. Crossplaintiff, MECCA, is the owner of the following property located within Palm Beach Farms Plat No. 3:

> Tracts 53 - 56, 65 - 68, and 77 - 92, inclusive, Block 53, Palm Beach Farms Company Plat No. 3, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54, inclusive;
>
> Together with, that 30 foot wide road strip lying in Block 53, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm

Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the easterly prolongation of the North line of Tract 81; on the East by the West line of Tracts 80 and 89; on the South by the westerly prolongation of the South line of Tract 89; on the West by the East line of Tracts 81 and 88;

And; That 30 foot wide road strip lying in Block 53, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, bounded as follows: on the North by the South line of Tracts 65 - 68 inclusive; on the East by the southerly prolongation of the East line of Tract 68; on the South by the North line of Tracts 77 - 80 inclusive; on the West by the northerly prolongation of the West line of Tract 80;

And; The East half of that 30 foot wide road strip lying in Block 53, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, said 30 foot wide road strip bounded as follows: on the North by the easterly prolongation of the North line of Tract 57; on the East by the West line of Tracts 56 and 65, and the southerly prolongation of the West line of Tract 65; on the South by the

westerly prolongation of centerline of the 30 foot wide road strip lying South of Tract 65; on the West by the East line of Tracts 57, 64, and the southerly prolongation of the East line of Tract 64;

And; The South half of that 30 foot wide road strip lying in Block 53, PALM BEACH FARMS COMPANY PLAT NO. 3, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 2, Pages 45 - 54 inclusive, said 30 foot wide road strip bounded as follows: on the North by the South line of Tracts 61 - 64 inclusive, and the easterly prolongation of the South line of Tract 64; on the East by the southerly prolongation of the West line of Tract 65; on the South by the North line of Tracts 81 - 84, and the easterly prolongation of the North line of Tract 81; on the West by the northerly prolongation of the West line of Tract 84.

(Hereinafter referred to as "the Mecca Property".)

63. MECCA deraigns title with respect to the Mecca Property as follows:

A. Warranty Deed - Robert P. Brown and Patricia M. Brown, his wife, to Mecca Farms, Inc., dated July 2, 1974, and recorded on July 3, 1974, in O.R. Book 2325, Page 298;

B. Warranty Deed - Robert P. Brown and Patricia M. Brown, his wife, to Mecca

Farms, Inc., dated April 20, 1976, and recorded on May 6, 1976, in O.R. Book 2536, Page 653; and

C. Warranty Deed -Louis W. Mecca and Conchetta V. Mecca, his wife, Vito Mecca and Patricia Mecca, his wife, and Leonard Mecca and Geraldine Mecca, his wife to Mecca Farms, Inc., dated January 24, 1975, and recorded on February 19, 1975, in O.R. Book 2393, Page 1055;

all in the Public Records of Palm Beach County, Florida. Copies of these deeds are attached hereto as Exhibit "F-1".

64. The Crossdefendants, and MLI claim some right, title or interest in the Road Strips described in Paragraph 62, above, by virtue of the conveyances and other documents referred to above. Said claims are void and invalid, and constitute clouds on MECCA's title with respect to said Road Strips. MECCA is entitled to the entry of judgment forever quieting his title with respect to said Road Strips. A sketch which depicts the location of the MECCA Property within Palm Beach Farms Co. Plat No. 3 is attached hereto as Exhibit "G".

The Road Strips at issue have been highlighted in orange thereon.

WHEREFORE, MECCA demands judgment against the Crossdefendants and MLI forever removing said clouds from its title to the MECCA Property and quieting the title thereto in him, and to the exclusion of the Crossdefendants and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT XII - QUIET TITLE BY VIRTUE OF ADVERSE POSSESSION - MECCA v. WEST PENINSULAR TITLE COMPANY, et al.

MECCA realleges and readopts Paragraphs 1 through 3, and 5 through 8, and 11 through 18, 62 and 63 as if specifically set forth herein.

65. This is an action to quiet title to real property pursuant to adverse possession under color of title.

66. MECCA and its predecessors in title have entered into possession of the Road Strips described in Paragraph 62, above, under a claim

of title exclusive to any other right continuously for a period in excess of seven (7) years.

67. Said right is founded on certain instruments, to wit, the Deeds described in Paragraph 63, above, together with all prior conveyances with respect to the real property described therein, emanating from PBFC to the original purchasers of said tracts forward.

68. Said possession by MECCA and its predecessors in interest has been continuous, open, obvious and exclusive.

69. Said property has been usually cultivated for a period in excess of seven (7) years.

70. Said possession has been adverse to any claim of right, title or interest in said property on the part of the Crossdefendants and MLI herein and any and all parties claiming by, through, under or against same.

71. By virtue of the aforementioned facts and circumstances, MECCA is entitled to a judgment for adverse possession with respect to

the Road Strips aforementioned, pursuant to Florida Statutes §95.16.

WHEREFORE, MECCA demands judgment against the Crossdefendants and MLI, forever removing said clouds from his title to the MECCA Property and quieting the title thereto in him, and to the exclusion of the Crossdefendants and MLI, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

COUNT XIII - QUIET TITLE
MECCA v. PALM BEACH COUNTY

MECCA realleges and readopts Paragraphs 1 through 18, and 62 and 63 as if specifically set forth herein.

72. Because the offer of dedication of the Road Strips contained in Palm Beach Farms Plat No. 3 was either not accepted by PBC, or in the alternative, because PBC's acceptance thereof has been either vacated or abandoned, MECCA's fee-simple title to the underlying land with respect to all Road Strips within the

MECCA Property has been freed from what, if any, public easement in favor of PBC said Road Strips were encumbered by as a result of the offer of dedication contained in the Plat.

73. Said Road Strips have not been used, controlled, maintained or possessed by PBC for a period in excess of ten (10) years. Accordingly, MECCA is entitled to have PBC execute and deliver a Quit-Claim Deed with respect to all said Road Strips to him, pursuant to Florida Statutes § 255.22, and Palm Beach County Ordinance 86-18.

74. The Order referred to in Paragraph 11(G), above, inter alia, prohibits PBC from taking any action under Ordinance 86-18 with respect to all property described in said Order, including the Road Strips aforementioned. The claim, if any, of PBC with respect to said Road Strips constitutes a cloud on MECCA's title with respect thereto.

WHEREFORE, MECCA demands judgment against PBC forever removing said cloud from its title to the MECCA Property and quieting the title

thereto in him, and to the exclusion of PBC, and all parties claiming by, through, under or against same, together with the award of all costs incurred herein, and such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to ERIC ASH, ESQ., 301 N. Olive Ave., 5th Floor, Government Center, West Palm Beach, Florida 33401, and to GREGORY L. WILLIAMS, ESQ., Post Office Box 897, Tampa, FL 33601-0897, ARTHUR C. KOSKI, ESQ., Koski, Thomas & Sanchez, P.A., 4800 N. Federal Highway, Suite 205-B, Boca Raton, Florida 33431; DONALD J. THOMAS, ESQ., 4800 N. Federal Highway, Suite 205-B, Boca Raton, Florida 33431; and SHARRON M. PITTS, ESQ., c/o County Attorney's Office, 301 North Olive Avenue, West Palm Beach, Florida 33401, by U.S. Mail, this 3rd day of July, 1995.

ALFRED A. LaSORTE, JR., P.A.
Attorney for J. Clinton Scott,
Trustee, Appolonia Farms,
Ltd., Boywic Farms, Ltd.,
and Mecca Farms, Inc.

United National Bank Tower,
Suite 1000
1645 Palm Beach Lakes Boulevard,
West Palm Beach, Florida 33401
Telephone: (407) 684-3000

ALFRED A. LaSORTE, JR., ESQUIRE
Florida Bar No. 325457

EXHIBIT LIST

Exhibits "A-1" - "A-4":	Legal description for property
Exhibit "B":	Palm Beach Farms Company Plat No. 3
Exhibit "C":	Order in U.S. D.C. Case No. 88-8111
Exhibit "C-1":	Scott deeds
Exhibit "D":	Sketch of Scott property
Exhibit "D-1":	Appolonia deeds
Exhibit "E":	Sketch of Appolonia property
Exhibit "E-1":	Boywic deeds
Exhibit "F":	Sketch of Boywic property
Exhibit "F-1":	Mecca deeds
Exhibit "G":	Sketch of Mecca property

FILED
SEP 26 1995
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No. 95-308

In The

Supreme Court of the United States

October Term, 1995

PALM BEACH COUNTY, *et al.*,

Petitioners,

vs.

WEST PENINSULAR TITLE CO., a Florida corporation, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioners should be relieved from tactical decisions they made during the litigation that were reflected in the pretrial stipulation?

2. Whether Petitioners may rely on affirmative defenses as to which they introduced no evidence at trial?

3. Whether a petition for certiorari may be based upon an alleged conflict with a decision never cited by Petitioners in the courts below?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel for Respondents, West Peninsular Title Company, a Florida corporation ("West Peninsular"); Absolute, Inc., a Florida corporation ("Absolute"); and Marion H. Cooper, as Personal Representative of the Estate of Alfred R. Cooper ("Cooper"), certify that the following persons or entities have an interest in the outcome of the appeal:

ABSOLUTE, INC., Plaintiff/Appellee/Respondent

ANDREWS, JAMES H., President, WEST PENINSULAR and ABSOLUTE

COOPER, MARION H., Personal Representative of the Estate of Alfred R. Cooper

Honorable EDMONDSON, J.L., Appellate Judge

Honorable GONZALEZ, JR., JOSE A., Trial Judge

Honorable HATCHETT, JOSEPH W., Appellate Judge

Honorable MELTON, HOWELL W., Appellate Judge

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ROBERTS, CAROLA., Defendant/Appellant/ Petitioner

SMITH, WILLIAMS & BOWLES, P.A., Law Firm representing Plaintiffs/ Appellees/Respondents

VALASQUEZ, PATTI A., Appellate Counsel for Defendants/Appellants/ Petitioners

WEST PENINSULAR TITLE COMPANY, Plaintiff/ Appellee/Respondent

WILLIAMS, GREGORY L., Trial and Appellate Counsel for Plaintiffs/Appellees/ Respondents

Respondents note that JEFFREY A. AMAN, JAMES A. MUENCH and JOAN O'DELL no longer have any interest in the outcome of this proceeding.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, West Peninsular Title Company, a Florida corporation, Absolute, Inc., a Florida corporation, and Marion H. Cooper, as Personal Representative of the Estate of Alfred R. Cooper, respectfully request that this Court deny the Petition for Writ of Certiorari which seeks review of the Eleventh Circuit's opinion below. That opinion is reported at 41 F.3d 1490 (11th Cir. 1995) and is reprinted in the Appendix to the Petition for Writ of Certiorari at pages 1 - 12 (hereinafter Pet. App. ___).

STATEMENT OF JURISDICTION

Petitioners seek to invoke this Court's certiorari jurisdiction under 28 U.S.C. § 1254 (1994), and Rule 10.1(a) of the Rules of the Supreme Court of the United States, allegedly based upon direct conflict with a case never cited by Petitioners in either of the courts below. Petitioners fail to advise the Court that both the District Court and the Court of Appeals for the Eleventh Circuit simply held Petitioners to the terms of the Pretrial Stipulation into which they freely entered. Thus, this case presents no question suitable for invocation of the Court's discretionary review powers.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED[1]

U.S. Const. amend. V

U.S. Const. amend. XIV, § 1

42 U.S.C. § 1983

42 U.S.C. § 1985(3)

42 U.S.C. § 1988

STATEMENT OF THE CASE

Much of Petitioners' Statement of the Case consists of matters outside the record, or of facts alleged but never made the subject of proof by affidavit or introduction of evidence at trial.[2]

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1. The text of the constitutional provisions and statutes involved are contained in the Appendix at pages 1a-4a. The Appendix to Respondents' Brief in Opposition is referred to hereinafter as Resp. App. __a.

2. The matters contained in the first full paragraph on page 9 of the (Cont'd)

Many of Petitioners' fact based arguments flatly contradict the record, including their own pleadings and the joint pretrial stipulation.[3] Respondents are unable to accept Petitioners' Statement of the Case and will therefore rely on their own statement, as set forth below.

The lengthy and somewhat complex history of this case began on March 15, 1988, when Respondents filed their verified complaint and demand for jury trial (the "complaint"), invoking the federal district court's original jurisdiction to consider federal claims to redress the deprivation of civil rights under color of law pursuant to 28 U.S.C. §§ 1331 and 1343 (R1-1-2).[4] Respondents also invoked the district court's supplemental jurisdiction to consider causes of action under state law which involved the same underlying facts as the federal claims (R1-1-2). 28 U.S.C. § 1367.

Respondents alleged that they were the successors in interest

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(Cont'd)

Petition, through the end of the first full paragraph on page 10 of the Petition, are outside the record in this case, or were alleged by Palm Beach County, but never made the subject of any proof by affidavit or evidence introduced at trial. Respondents invite Petitioners in any reply to cite *evidentiary* support for those allegations anywhere in the record in this case.

3. The Petition alleges that, "The action was against the County, even though the County did not claim a competing interest in the fee simple ownership of the strip parcel. . . ." Pet. at p. 14. As authority for that proposition, Petitioners cite the Appendix at page 80, which is a portion of the Verified Complaint and Demand for Jury Trial. Paragraph 28 of the Complaint states, "The County does not claim a fee simple interest in the Strip Parcels." In its Answer and Affirmative Defenses, "Defendants deny the allegations of paragraph 26, 27, and 28." AP. 111. *See also* Complaint, ¶ 35 (Pet. App. 82); Answer, ¶ 11 (Pet. App. 112).

4. Although the original complaint also alleged diversity of citizenship as an independent basis for federal jurisdiction, Respondents conceded the absence of complete diversity among the parties.

to The Palm Beach Farms Company ("Palm Beach Farms"), the original owner and offeror of certain described strips of land ("strip parcels") which had been offered for dedication to Palm Beach County (the "County") but not accepted by the County before the offer of dedication was revoked in accordance with Florida law (R1-1-7).

On June 24, 1986 the County enacted Ordinance No. 86-18 (the "ordinance"), which authorized the County to sell its easement and right of way interests ("public rights") in real property originally acquired by the County through dedication[5] in return for a "privilege fee" amounting to 80% of the fair market value of the underlying property encumbered by the public easement or right of way (R1-1-9). In return for its privilege fee, the County would issue a recordable bill of sale known as an "abandonment resolution" which was recorded in the public records and purported to "vest" the public rights in the name of the payor of the privilege fee, according to the language of the ordinance (R1-1-Ex. I, p. 11). Next, the property appraiser would list the payor of the privilege fee as the owner of the property for ad valorem tax purposes (R2-41A-2).[6] Presumably there was nothing irrational about the County's privilege fee for public rights scheme so long as its application was confined to pre-existing public rights acquired by dedication, as required by the ordinance. However, despite the facial limitation on the application of the ordinance to "public rights" first "acquired" by the County (*e.g.*, through dedication), the County began to collect privilege fees in return for abandonment resolutions for non-

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5. Although the ordinance provides for abandonment of property acquired by means other than dedication, dedication was the issue in this case.

6. The first amendment to the original complaint is found in the Respondents' motion for leave to amend complaint filed on October 21, 1988. (Resp. App. 5a-9a). Respondents' motion for leave to amend complaint was granted by Order dated December 1, 1988 (R3-43) (Resp. App. 10a).

existent public rights in Respondents' undedicated strip parcels.

The recorded abandonment resolutions coupled with the "vesting" language of the ordinance (incorporated by reference in the abandonment resolution) and the cooperation of the property appraiser's office conferred governmental legitimacy to a scheme that was well beyond what had been authorized by ordinance and placed a significant record cloud on Respondents' interest in the undedicated strip parcels. Respondents were unwilling to pay the privilege fee or otherwise submit to an ordinance which was facially inapplicable, and filed this action in federal district court.

Respondents alleged that the County was arbitrarily and capriciously applying the ordinance to the strip parcels which had never been dedicated, as the ordinance required, and in which the County had no public interest to sell (R1-1-10). Respondents also contended that the County's wrongful application of the ordinance to undedicated property coupled with the recordable abandonment resolution and the property appraiser's listing of the payor of the privilege fee as the owner of the property worked in combination to cloud and ultimately "take" Respondents' interest to the undedicated strip parcels as a matter of public record (R2-41A-3). Respondents also alleged and sought a declaration under Florida law that because the offer of dedication had not been accepted prior to revocation, the County has no interest in the strip parcels and that Respondents, as the successors of the offeror, were the fee simple owners (R1-1-19).

The complaint requested declaratory relief and various remedies under federal law; including relief from enforcement of an unconstitutional ordinance pursuant to 28 U.S.C. §§ 2201-2202 (R1-1-13-14), a permanent injunction enjoining the County's application of the ordinance to the undedicated strip parcels pursuant to 42 U.S.C. §§ 1983 and 1985, and damages

(R1-1-10-13; R2-41A). Respondents also sought declaratory relief under Florida law, including a determination that the strip parcels were never dedicated to the County, that Petitioners had no interest in the strip parcels as a matter of law and that Respondents were the fee simple owners (R1-1-10-20).[7] There were two amendments to the complaint (R2-41A; R7-136). The complaint, as amended, is referred to as the "complaint."

The County filed a motion to dismiss or for a more definite statement (R1-5). After the first amendment to the complaint (R2-41A) (Resp. App. 5a-9a), Petitioners filed a renewed (amended) motion to dismiss (the "motion to dismiss") (R3-45; R3-46). The motion to dismiss raised, among other things, lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted and failure to join a party under Fed. R. Civ. P. 19. On January 20, 1989 the court entered an order reserving ruling on the motion to dismiss (R3-50), which the court denied after trial. (R8-171). On February 17, 1989, Petitioners filed their answer and affirmative defenses in which they denied the material allegations of the complaint, and asserted defenses which mirrored the defenses raised by motion to dismiss (R3-51). Respondents filed a reply denying the defenses (R3-52).

On November 20, 1989, Respondents filed their first motion for partial summary judgment, together with a memorandum of law (R4-67; R4-68), an affidavit in support (R4-66), and a request for judicial notice[8] of various public records including deeds (R4-65, Exhibits 1-5), and the County's answer, affirmative defenses, counterclaim for ejectment and quiet title in state court litigation (R4-65, Ex. 6). Although Petitioners filed a memorandum in

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7. Respondents withdrew this claim after trial (R14-204-7), and the district court therefore adjudged that it was moot (R8-181-3).

8. The request for judicial notice was filed pursuant to Federal Rule of Evidence 902(4).

opposition (R4-70), they neither objected to the request for judicial notice, nor filed any affidavits or other evidence in opposition.

After granting Respondents' request for judicial notice (R4-76), and hearing arguments, the district court granted Respondents' motion for partial summary judgment in part (R6-103), determining: (1) that the strip parcels were offered for dedication to the County by virtue of the recording of the plat; and (2) that Respondents' factually uncontested chain of title (as alleged in paragraph 18 of the complaint) "was true and correct" (R6-103-2).

On February 28, 1990, Petitioners filed a motion for summary judgment and memoranda of law, requesting summary judgment on allegedly undisputed "material facts" (R4-82). Although the motion states that they "have filed an Affidavit and would show that there is no issue . . . with regard to the matters presented . . ." (R4-82-1), no supporting affidavit was filed. Petitioners' unsupported motion for summary judgment was denied in its entirety (R6-103).

On September 7, 1990, Respondents filed their second motion for partial summary judgment and memorandum of law (R6-110; R6-111), requesting a determination that the offer of dedication of the strip parcels had been expressly revoked on September 9, 1976 and that prior to revocation, the County had not expressly or impliedly accepted the offer (R6-110-2).

Respondents requested and obtained judicial notice of an instrument entitled "Notice of Withdrawal of Platted Roads, Streets, and Other Unexercised Rights" (the "1976 notice of revocation") (R6-109). Petitioners neither objected to that request for judicial notice nor filed any affidavits in opposition to the motion. Instead, Petitioners served an unsworn pleading

entitled "statement of material facts in opposition to the plaintiffs' second motion for partial summary judgment," which listed six issues which remained "to be tried" (R6-112). Respondents' second motion for summary judgment was eventually granted in part, but only after the parties entered into the joint pretrial stipulation (R7-147).

On July 9, 1991, the parties filed a joint pretrial stipulation (the "stipulation") pursuant to Rule 14, Rules of the United States District Court for the Southern District of Florida (1991).[9] By stipulation, Petitioners abandoned all of their affirmative defenses for trial as the parties narrowed the trial issues to the County's implied acceptance of the offer of dedication.[10] As uncontested facts the parties stipulated and agreed: (1) that Respondents were the successors in interest to Palm Beach Farms; (2) that Respondents' chain of title was as alleged; and (3) that the recording of the plat constituted an offer of dedication (R7-142-3-4). The parties agreed that as a matter of law, "the recording of the plat constituted an offer of dedication which the County had a duty to accept within a reasonable period of time and in no event later than September 9, 1976, when the offer was revoked (to the extent that it had not previously been accepted)" (R7-142-4). The stipulation further outlined the agreement of the parties as follows:

> Although the complaint alleges *various causes of action and requests various remedies, the parties stipulate that three (3) factual issues will be presented to the jury.* Those issues are as follows:

---

9. The Local Rules of the Southern District have been re-numbered since the 1991 rules which were in effect at the time of the stipulation. The current counterpart to Rule 14 in the 1991 rules is Rule 16.1E in the 1995 rules.

10. The stipulated fact issue of implied acceptance was framed in three distinct questions, which are quoted below in their entirety.

> (1) Whether the County accepted the offer to dedicate the strip parcels within a reasonable time after August 20, 1912?
>
> (2) Whether the County accepted the offer to dedicate the strip parcels prior to September 9, 1976 [the date of express revocation]?
>
> (3) And if the answer to question number two (2) is "yes," whether the County intended to limit its acceptance to specific roads that were accepted by resolution or improvement?
>
> The parties further stipulate that in the event plaintiffs prevail on issue 1, 2, or 3 above, they *shall be entitled to the remedies requested in the complaint. In the event that plaintiffs do not prevail as provided above, they shall be entitled to none of the relief requested in the complaint*.

(R7-142-1-2; emphasis supplied).

On July 31, 1991 (after the stipulation had been filed with the district court), Respondents filed an uncontested motion for entry of order granting plaintiffs' second motion for partial summary judgment on issues resolved by stipulation (the "uncontested motion") (R7-145). The uncontested motion provided that "[t]he undersigned has conferred with counsel for Defendants and has been informed that Defendants do not contest this motion" (R7-145-1). The uncontested motion recited the particulars of the stipulation and requested entry of an order granting Respondents' second motion for partial summary judgment (which was still pending) on the issues resolved by stipulation. The uncontested

motion underscored the significance of the stipulation as follows:

> 3. On or about July 8, 1991, Plaintiffs and Defendants filed a Joint Pretrial Stipulation (the "Stipulation") *resolving several previously-contested factual and legal issues and significantly limiting the remaining issues to be presented to the jury (the "jury issues") with the agreement that, in the event that Plaintiffs prevail on the jury issues, they shall be entitled to the remedies requested in the Complaint (to be resolved in a subsequent hearing)* and further agreeing that in the event the Plaintiffs do not prevail on the jury issues, they shall be entitled to none of the relief requested in the Complaint.

(R7-145-3; emphasis supplied). Petitioners did not object to the uncontested motion.

On August 30, 1991, approximately ten months prior to trial, the district court entered an order adopting the stipulation, granting the uncontested motion, and granting Respondents' second motion for partial summary judgment in part (R7-147). As a result, the only fact issue remaining for trial was the stipulated issue of whether prior to September 9, 1976, the County had impliedly accepted the offer of dedication. At no time prior to or during the trial did Petitioners move to modify, amend or vacate the stipulation or the order granting the uncontested motion.

On June 23, 1992, the case proceeded to jury trial with the evidence limited in accordance with the stipulation. Petitioners did not raise or argue the motion to dismiss during trial. Approximately two weeks after the jury returned a verdict in

favor of Respondents, Petitioners filed a motion requesting that the district court rule on the motion to dismiss (R8-170). The legal defenses which served as the basis for Petitioners' motion to dismiss simply mirrored the affirmative defenses which were abandoned by stipulation. At trial, Petitioners offered no evidence of any of the abandoned affirmative defenses. By order dated July 8, 1992, the motion to dismiss was denied (R8-171).

The verdict form consisted of the three questions set forth in the stipulation (R7-162; R7-142-1-2). In responding "no" to the first question on the verdict form, the jury determined that the County did not "accept the offer of dedication within a reasonable time after August 20, 1912" (R7-162). The jury did not reach questions 2 or 3. After the jury verdict, proposed final judgments were submitted by both parties. The district court prepared and entered its own final order (R8-181).

During the period that the parties were submitting proposed final judgments, Petitioners filed objections to entry of Respondents' final judgment (R 8-174) ("Petitioners' objections"). In Petitioners' objections, they acknowledged that Respondents were "*entitled to a judgment finding that they are the fee simple title holders of the rights of way dedicated to the public by Palm Beach Farms Plat No. 3 and that Defendants have no further public interest under the dedication, in that property.*" (R8-174-6; emphasis supplied).

The district court entered judgment in favor of Respondents on the basis of the stipulation as a "contract" and partial "settlement" (R8-181-3). The district court determined and awarded the relief stipulated by the parties "as if a taking had occurred" (R8-181-3) by permanently enjoining application of the ordinance to the strip parcels and further providing the declaratory relief Respondents had requested in the complaint. The district court determined Respondents' entitlement to

attorneys' fees and costs as a contractual right under the stipulation (R8-181-4). Since the relief was founded on the stipulation as a partial settlement agreement between the parties, it was granted pursuant to the district court's supplemental jurisdiction over state claims. 28 U.S.C. § 1367.

Additionally, and independently, the district court found on the basis of its review of the entire record that the ordinance was unconstitutional as applied to the strip parcels. The district court enjoined enforcement, granted declaratory relief, and determined that Respondents were entitled to attorneys' fees and costs pursuant to 42 U.S.C. § 1988 (R8-181-4). The district court did not award other remedies requested in the complaint such as damages, just compensation for the alleged taking or a constructive trust for abandonment proceeds.

After entry of the final judgment, Respondents filed their motion to tax attorneys' fees and costs, together with supporting affidavits, as provided in the final judgment (R9-183-187; R10-194-196). Petitioners opposed the motion (R9-188). On April 13, 1993, the district court entered an order granting Respondents' motion and awarded attorneys' fees and costs (R10-197).

Petitioners filed a notice of appeal from the final judgment (R9-182), and a notice of appeal from the order awarding attorneys' fees and costs to Respondents (R10-198). The two appeals were consolidated.

In a per curiam opinion, the Court of Appeals for the Eleventh Circuit affirmed the district court, stating: "Defendants raise several arguments, *hoping mainly to avoid concessions made in district court in the joint pretrial stipulation.* (Pet. App. 5) (emphasis added).

SUMMARY OF ARGUMENT

1. Petitioners seek to invoke this Court's certiorari jurisdiction to obtain relief from a pretrial stipulation freely entered into after three years of discovery; even though Petitioners failed to seek such relief from the district court before or after trial. The district court found that it "would be manifestly unjust not to enforce the stipulation due to [Respondents'] reliance on the stipulation at trial." (R8-181-3). Similarly, the Court of Appeals noted that "[Petitioners] raise several arguments, hoping mainly to avoid concessions made in district court in the pretrial stipulation." (Pet. App. 5.) Certiorari review never was intended to relieve litigants from the results of their own tactical decisions. Based upon the peculiar circumstances created by Petitioners' tactical decisions, any ruling necessarily would be confined to the facts of this case, and have limited general applicability.

2. The decision of the Court of Appeals for the Eleventh Circuit in this case does not conflict with the decision in *Murray v. United States*, 817 F.2d 1580 (Fed. Cir. 1987). *Murray* involved mortgagees who had not foreclosed their mortgage prior to the tax sale of the real property. Under North Dakota law, a mortgage created only a lien on real property, not an interest therein. In that context, the Court of Appeals for the Federal Circuit merely stated the obvious, "As to the real estate, the Claims Court correctly reasoned that only one possessing an ownership interest in the real property at the time of the taking is entitled to receive the required compensation." *Murray*, 817 F.2d at 1583. In this case, based upon the joint stipulation and the evidence submitted in support of the motions for summary judgment, the district court made a finding of fact that Respondents had a fee simple interest in the strip parcels. Moreover, in this case there was no award of just compensation for any alleged taking.

3. Respondents had standing to bring this action. The Verified Complaint and Demand for Jury Trial alleged that Respondents were "the fee simple owners of the strip parcels." (Pet. App. 81) In the Amended Complaint, Respondents alleged that Petitioners had applied the 1986 Ordinance and accepted petitions for abandonment filed by property owners adjacent to Respondents' strips, and had allowed those strips to be recorded on the State tax rolls as the property of those other property owners. (Resp. App. 6a-7a). In effect, Respondents alleged that they were the fee simple owners of the strip parcels, and that the County was purporting to convey some interest in those strip parcels to third parties. Those allegations alone satisfy the constitutional requirement for case or controversy, and gave Respondents standing to assert those injuries.

Respondents had standing as the corporate successors in interest to Palm Beach Farms, and as the successor in title as fee simple owner of the strip parcels. Either legally protected interest was sufficient to satisfy the "injury in fact" requirement of standing. Both were alleged in the complaint and otherwise affirmatively appear uncontroverted in the record. Respondents' interest as successor in interest to Palm Beach Farms was published to the jury as an uncontroverted fact without objection by Petitioners. The validity of Respondents' chain of title was independently established by summary judgment and stipulation as an uncontroverted fact.

4. Respondents' claims were ripe for adjudication. Petitioners' ripeness analysis misapplies *Williamson County v. Hamilton Bank*, 473 U.S. 172 (1985) because unlike *Williamson County*, this case involves an arbitrary and capricious due process claim which arises in a non-zoning context. No zoning ordinance, land use regulation, or permit denial was involved in this case. Respondents' claims were ripe when the County acted in an arbitrary manner by applying the ordinance to the undedicated

strip parcels. The district court properly denied the motion to dismiss for lack of subject matter jurisdiction.

5. The district court properly denied the motion to dismiss raising the failure to join allegedly indispensable parties. Petitioners abandoned this and all other affirmative defenses by pretrial stipulation and thereafter adduced no evidence at trial to prove or preserve this issue, except as a facial attack on the complaint. Petitioners can point to no record evidence establishing even the existence of so-called indispensable parties. The absence of a factual record confines this defense to the four corners of the complaint. No affidavit or other evidence was ever submitted to establish the names of so-called adjoining landowners, what land, if any, they own, where it is located, and whether what they own is in fact contiguous to the strip parcels. The defense was abandoned by pretrial stipulation and left abandoned at trial.

6. The district court did not abuse its discretion by entering judgment in accordance with the stipulation. The stipulation was entered into knowingly and voluntarily after three years of discovery. Neither before nor after trial did Petitioners make any effort to modify or amend the stipulation. The stipulation contains no misstatements of law and Petitioners have not argued otherwise. Petitioners have established no record from which to argue anything other than their desire to be relieved from the result of their own tactical decisions. The district court found that it would be manifestly unjust not to enforce the stipulation (R8-181-3).

7. On the basis of the stipulation as a partial settlement agreement, and independently under 42 U.S.C. § 1988, the district court properly awarded attorneys' fees and costs to Respondents.

REASONS FOR DENYING THE WRIT

I.

NO DIRECT CONFLICT EXISTS.

Petitioners assert as a basis for this Court's exercise of its discretionary jurisdiction, the existence of direct conflict between the decision of the Court of Appeals for the Eleventh Circuit in this case, and the decision in *Murray v. United States,* 817 F.2d 1580 (Fed. Cir. 1987). Petitioner's assertion of "direct conflict" fails to withstand analysis. The *Murray* case involved mortgagees who had not foreclosed their mortgage prior to the tax sale of the real property to satisfy IRS liens. Under North Dakota law, a mortgage created only a lien on real property, not an interest therein.

In that context, the Court of Appeals for the Federal Circuit merely stated the obvious, "As to the real estate, the Claims Court correctly reasoned that only one possessing an ownership interest in the real property at the time of the taking is entitled to receive the required compensation." *Murray,* 817 F.2d at 1583. In this case, based upon the joint stipulation and the evidence submitted in support of the motions for summary judgment, the district court made a finding of fact that Respondents had a fee simple interest in the strip parcels. (R8-181-3, 4) (Pet. App. 21). In light of that finding of fact of an ownership interest in the property, the decision in *Murray vs. United States* has no application to this case, and no conflict exists which would justify the exercise of the Court's certiorari jurisdiction. Moreover, in this case, there was no award of just compensation.

The Complaint in this case was filed on March 15, 1988. If the decision in *Murray* created the "direct conflict" asserted by Petitioners, then that decision would have been persuasive

authority in the district court and the Court of Appeals. Petitioners never cited the decision in *Murray v. United States* in either of the courts below. After more than seven years of hard fought litigation, Petitioners' claim to have located a 1987 case which directly conflicts with the decision of the Court of Appeals for the Eleventh Circuit in this case, represents yet another attempt to nullify the joint pretrial stipulation.

II.

RESPONDENTS HAVE "STANDING" AS CORPORATE SUCCESSOR IN INTEREST TO PALM BEACH FARMS AND AS SUCCESSOR IN TITLE AND RECORD FEE SIMPLE OWNER OF THE STRIP PARCELS.

A central component of Article III's case or controversy requirement is that the litigant must have standing to invoke the power of the federal court. *Allen v. Wright*, 468 U.S. 737, 750, 104 S. Ct. 3315, 3324, 82 L. Ed. 2d 556 (1984). By motion to dismiss, Petitioners challenged the sufficiency with which the complaint alleged Respondents' standing. "When the defendant challenges standing via a motion to dismiss, both the trial and reviewing courts 'must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.'" *Region 8 Forest Service Timber Purchasers Council v. Adcock*, 993 F.2d 800, 806 (11th Cir. 1993), *cert. denied sub. nom., Southern Timber Purchasers Council v. Meier*, ___ U.S. ___, 114 S. Ct. 683, 126 L. Ed. 2d 651 (1994), *citing Warth v. Seldin*, 422 U.S. 490, 501, 95 S. Ct. 2197, 2206, 45 L. Ed. 2d 343 (1975). Every doubt must be resolved in the non-moving party's favor, and all well-pleaded allegations of the complaint must be accepted as true. *Miree v. DeKalb County*, 422 U.S. 25, 27 n. 2, 97 S. Ct. 2490, 2492 n. 2, 53 L. Ed. 2d 557 (1977).

Petitioners' post-trial concession belies the assertion that there was no injury in fact.

> Pursuant to the jury's verdict, [Respondents] are only entitled to a judgment finding that they are the fee simple title holders of the rights of ways dedicated to the public by Palm Beach Farms Plat No. 3 and that [Petitioners] have no further public interest under the dedication, in that property.

(R8-174-6).

Under Article III's case or controversy requirement, "plaintiff must have [first] suffered an 'injury in fact' — an invasion of a legally-protected interest which is (a) concrete and particularized and (b) 'actual or imminent,' not 'conjectural' or 'hypothetical.' " *Region 8*, 993 F.2d at 805. The allegation of ownership of the property to which the ordinance was allegedly improperly applied was sufficient to meet the pleading threshold of standing. *Pennell v. City of San Jose*, 485 U.S. 1, 108 S. Ct. 849, 99 L. Ed. 1 (1988). Respondents alleged two distinct legally protected interests which were "concrete," "particularized," and "actual" rather than "conjectural" or "hypothetical." At paragraphs 11 and 12 of the complaint Respondents alleged their legally protected interest as corporate "successors in interest to Palm Beach Farms" (R1-1-3). At paragraph 32 Respondents alleged their legally protected interest as successors in record title as "fee simple owners of the strip parcels" (R1-1-9). Respondents alleged that the strip parcels had never been "dedicated" to the County (R1-1-8).

As a matter of Florida law, in the absence of dedication the County has no "public interest" in the strip parcels. *City of Miami v. Florida East Coast Railway Co.*, 79 Fla. 539, 84 So. 726 (1920). In the absence of acceptance of the offer of dedication, the offeror [Palm Beach Farms] or its successor in interest [Respondents] is the "owner of the unencumbered fee with full

power to sell or dispose of said lands in any lawful manner." *Anderson v. Town of Groveland*, 113 So. 2d 569, 571 n. 5 (Fla. 2d DCA 1959). *See also Town of Crystal River v. Williams*, 61 So. 2d 382 (Fla. 1952).

Standing also requires "a causal connection between the injury and the conduct complained of" . . . "fairly tracable to the challenged action of the defendant . . ." *Region 8*, 993 F.2d at 805. Respondents specifically and repeatedly alleged that it was the "enforcement" of the ordinance against the undedicated strip parcels that was depriving them of their property (R1-1-10-13) and causing them irreparable harm (R1-1-11-12). Even "the likelihood of enforcement . . . is a sufficient threat of actual injury to satisfy Article III's requirement that a plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Pennell v. City of San Jose*, 485 U.S. 1, 108 S. Ct. 849, 855 (1988), *citing Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S. Ct. 2301, 2305, 60 L. Ed. 2d 895 (1979). To prevail on an arbitrary and capricious due process claim, Respondents need "only prove that the government acted arbitrarily and capriciously." *Eide v. Sarasota County*, 908 F.2d 716, 722 (11th Cir. 1990), *cert. denied*, 498 U.S. 1120, 111 S. Ct. 1073, 112 L. Ed. 2d 1179 (1991).

The ordinance requires that the County first have a public interest acquired by dedication (R1-1-Ex. I-1). The ordinance defines a right of way as "any strip of land *dedicated* or deeded for ingress and egress for access purposes" (R1-1-Ex. I-3; emphasis supplied). The complaint alleges the County's unconstitutional "enforcement" of the ordinance against the *undedicated* strip parcels (R1-1-11-14). As a result, independent of the County's application of the ordinance to the undedicated strip parcels, plaintiffs alleged significant injuries, including a "taking" (R1-1-10, 12-13; R2-41A-3). The application of the ordinance by

recordation of an abandonment resolution purported to "vest" title in a third party payor of a privilege fee and authorize the additional privilege (conferred by the property appraiser's office) of having the property listed in the name of the payor as owner (R1-1-Ex. I, p. 12). As the district court noted, the County's application of the ordinance to the undedicated strip parcels "placed a *cloud* on plaintiffs' title to the land which necessitated the filing of the instant lawsuit . . ." (R8-181-4; emphasis supplied).

Standing also requires that it be "likely" as opposed to merely "speculative" that the injury will be "redressed by a favorable decision." *Region 8*, 993 F.2d at 805. Clearly, it was likely rather than speculative that injunctive relief would provide redress by prohibiting the prospective application of the ordinance to the undedicated strip parcels.

The complaint alleges the unconstitutionality of the ordinance, the taking and deprivation of Respondents' property without due process, and that the County acted arbitrarily and capriciously (R1-1-11-13). The allegations of the complaint, which must be taken as true, were sufficient to deny the motion to dismiss at the pleadings stage, under the standards set forth in *Pennell* and *Region 8*.

III.

RESPONDENTS' CLAIMS WERE RIPE.

Petitioners rely upon ripeness cases that apply in zoning, land use and permit cases. The challenged ordinance had no resemblance to a zoning or land use regulation. The finality prong of *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985), does not apply to Respondents' non-

zoning, substantive due process claim. *Eide v. Sarasota County*, 908 F.2d at 724 n.13. The claim arises "the moment the government acts in an arbitrary manner and (in an as applied challenge) that arbitrary action is applied to the owner's property." *Id.* (emphasis supplied) The substantive due process claim was ripe the "moment" the ordinance was applied to the undedicated strip parcels. *Id.*

> The ripeness of an as applied arbitrary and capricious due process claim depends upon the *nature of the claim*, which is often revealed by the *remedy sought*. We can conceive of an arbitrary and capricious due process claim in which the final decision requirement would be satisfied with a single arbitrary act.

Eide, 908 F.2d at 726 (emphasis supplied). Ultimately Respondents sought only "an injunction against similar irrational decisions" to apply the ordinance to the undedicated strip parcels, and did not attempt to prove or recover damages.

The Court of Appeals for the Eleventh Circuit held that:

> Because we conclude that plaintiffs' arbitrary and capricious due process claim was ripe, we say nothing [about] whether plaintiffs' additional constitutional claims were ripe. We do note, however, that plaintiffs were not granted relief pursuant to a specific claim. Instead, the County stipulated that plaintiffs would be entitled to the remedies requested if plaintiffs prevailed on any of the disputed fact issues.

Palm Beach County v. West Peninsular Title Co., 41 F.3d at 1492 n.3 (Pet. App. 9). Respondents' claim was ripe "as soon as the County applied the ordinance and the petition process (including a $400 nonrefundable application fee) to the undedicated strip parcels." *Id.* at 1492 (Pet. App. 10).

IV.

THE DISTRICT COURT PROPERLY DENIED THE MOTION TO DISMISS FOR FAILURE TO JOIN ALLEGEDLY INDISPENSABLE PARTIES.

A Rule 12(b)(6) motion should not be granted "unless it appears beyond doubt that the [opposing party] can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). In making that determination, the complaint should be construed in the light most favorable to the party against whom the motion is directed. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L. Ed. 2d 90 (1974). Every doubt must be resolved in the opponent's favor, and all well-pleaded allegations of the complaint must be accepted as true. *Miree v. DeKalb County*, 433 U.S. 25, 27 n. 2, 97 S. Ct. 2490, 2492 n. 2, 53 L. Ed. 2d 557 (1977).

Petitioners argue that Respondents failed to join indispensable parties. (Pet. at 41-42). When a litigant asserts that there are indispensable parties to an action, that party bears the burden of showing the existence of absent parties and the nature of their unprotected interests. Wright & Miller, *Federal Practice and Procedure:* Civil 2d § 1359. Petitioners did neither, nor could they under applicable Florida law. Here, Petitioners raised the defense of failure to join indispensable parties in their motion to dismiss (R3-45-4), and as an affirmative defense (R3-51-5). Petitioners failed to file affidavits or otherwise adduce evidence to establish the existence of adjoining owners or to corroborate the contiguity of their undescribed property. They failed to meet

their *factual* burden of proving the existence of absent parties and the nature of their interests. Thus, the issue was not developed factually or preserved except as a facial attack on the complaint.

Instead, Petitioners abandoned the defense by stipulation and offered no evidence of necessary or indispensable parties at trial. Thus, there is no basis in the record for this Court to find that Respondents failed to join indispensable parties. An appellate court may only consider the record as it was made before the district court. *Ballard Medical Products v. Wright*, 821 F.2d 642 (Fed. Cir. 1987). A motion to dismiss for failure to join indispensable parties "must be premised upon credible evidence which supports [the movant's] claim that such parties exist and identifies those persons who are claimed to be indispensable. Absent such evidence, this Court would be forced to make its decision *in vacuo*." *In re Caesars Palace Securities Litigation*, 360 F. Supp. 366, 395 (S.D.N.Y. 1973) (emphasis in original), *citing Estes v. Shell Oil Co.*, 234 F.2d 847, 852 (5th Cir. 1956).

In determining whether to dismiss a case for failure to join indispensable parties, "[t]he major question is whether the court can render a decision which will not impair the rights of the absent party." *Ente Nazionale Idrocarburi v. Prudential Securities Group, Inc.*, 744 F. Supp. 450, 456 (S.D.N.Y. 1990). Since Respondents' claims for relief were entirely predicated on the assertion that Petitioners had no *public rights* in the strip parcels, there can be no sense in which the district court's determination runs afoul of Rule 19.

It is within the sound discretion of the trial court to determine the issue of the indispensability of a party to an action, and that decision will not be reversed absent an abuse of discretion. *McVay v. Western Plains Service Corp.*, 823 F.2d 1395, 1401 (10th Cir. 1987). In view of the stipulation, the jury's verdict, the absence of any evidence in the record which would support a

defense of failure to join indispensable parties, and the nature of the relief obtained by Respondents, the district court did not abuse its discretion in declining to dismiss this case on the ground of failure to join indispensable parties.

The Court of Appeals for the Eleventh Circuit correctly held that:

> It was no abuse of discretion for the district court to refuse to dismiss this case for failure to join indispensable parties. The County, as movant, had the burden "to show the nature of the unprotected interests of the absent parties." [Y]et, the County's citation to the record reveals only that it established the existence of adjoining landowners (not the nature of the allegedly unprotected interests).

Palm Beach County v. West Peninsular Title Co., 49 F.3d at 1492 (citations omitted) (Pet. App. 9).

V.

THE DISTRICT COURT PROPERLY ENTERED FINAL JUDGMENT BASED UPON THE JURY VERDICT AND THE PRETRIAL STIPULATION.

The joint pretrial stipulation was prepared and filed pursuant to Local Rule 14. Almost one year passed between its filing and trial. The uncontested motion was filed quoting the stipulation (R7-145), and the order granting the Respondents' second summary judgment was entered thereafter without objection (R7-147).

The stipulation documents four (4) stipulated facts and four (4) uncontested facts (R7-142-3-4). It states only one "issue of

law on which there is agreement," which merely recited the basic law of dedication applicable to the facts (R7-142-4). Finally, it confirmed Respondents' entitlement to unspecified remedies if they prevailed in the jury trial.

The parties narrowed the fact issue to that of "implied acceptance." Nothing in the record establishes that such a narrowing of the issues was manifestly unjust. After three years of litigation, presumably both sides had the perspective to recognize and concede facts that no longer were reasonably in dispute. By stipulation, Petitioners voluntarily relinquished their right to adduce evidence on their affirmative defenses. There is nothing in the record to demonstrate that after three years of discovery, Petitioners' voluntary abandonment of its affirmative defenses was improper.

By stipulation, Petitioners conceded the validity of Respondents' chain of title (R7-142-4). Shortly after trial, Petitioners conceded that Respondents were "entitled" to a judgment "finding that they are the fee simple title holders of the rights of way . . . and that defendants have no further public interest under the dedication under that property" (R8-174-6). Certainly Petitioners had the right to concede that factual issue. This Court's certiorari jurisdiction should not be invoked to relive Petitioners from the result of their tactical decisions.

In reviewing a district court's enforcement of a pre-trial stipulation, "the district court has broad discretion in determining whether to hold a party to its stipulation, . . ." *Morrison v. Genuine Parts Co.*, 828 F.2d 708, 709 (11th Cir. 1987), *cert. denied*, 484 U.S. 1065, 108 S. Ct. 1025, 98 L. Ed. 2d 990 (1988). Moreover, the determination of whether the enforcement of a stipulation would be "manifestly unjust" must be "based on the record." *Smith v. Blackburn*, 785 F.2d 545, 549 (5th Cir. 1986). Here, no record of manifest injustice exists.

Pre-trial stipulations are encouraged in order to promote judicial economy and dispense with matters that are not really at issue. *Sam Galloway Ford, Inc. v. Universal Underwriters Ins. Co.*, 793 F. Supp. 1079, 1082 (M.D. Fla. 1992), *citing Carnegie Steel Co. v. Cambria Iron Co.*, 185 U.S. 403, 22 S. Ct. 698, 46 L. Ed. 968 (1902). *See also United States v. One 1978 Bell Jet Ranger Helicopter*, 707 F.2d 461, 463 (11th Cir. 1983). Although stipulations may be set aside to avoid manifest injustice, pre-trial stipulations should not be set aside "if doing so would *unfairly* prejudice the opposing side." *Sam Galloway Ford, supra* at 1082 (emphasis in original). As the district court observed, "in this case, the manifest injustice would result only if the stipulation were *not* enforced due to the [Respondents'] reliance on the stipulation at trial" (R8-181-3; emphasis the court's).

The district court did not abuse its discretion by entering final judgment and awarding remedies in accordance with the plain language of the stipulation.

CONCLUSION

Respondents request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A — CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. V:

> No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix A

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1985(3):

> (3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more

persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1988:

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not

adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

APPENDIX B — PLAINTIFF'S MOTION FOR LEAVE TO AMEND DATED OCTOBER 21, 1988

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

CASE NO. 88-8111-CIV-GONZALEZ

WEST PENINSULAR TITLE COMPANY, a Florida corporation, ABSOLUTE, INC., a Florida corporation, and MARION H. COOPER, as Personal Representative of the Estate of Alfred R. Cooper,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision of the State of Florida, and CAROL A. ROBERTS, Chair of the BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY,

Defendants.

PLAINTIFFS' MOTION FOR LEAVE TO AMEND

COME NOW the Plaintiffs, WEST PENINSULAR TITLE COMPANY, ABSOLUTE, INC. and MARION H. COOPER, by and through their undersigned counsel, and hereby move this Court for leave to file an amendment to their Complaint, and would state:

1. In March, 1988, the Plaintiffs filed their Complaint against the Defendants, alleging confiscatory taking claims of the Plaintiffs' property in violation of 42 U.S.C. Section 1983.

Appendix B

2. As mentioned paragraphs 29, 30, 34, 35, 73 and 74 of the Complaint, Defendant PALM BEACH COUNTY has granted petitions for abandonment and passed resolutions pursuant to the 1986 ordinance, purporting to convey right and interest in Plaintiffs' property to petitioning adjacent owners ("adjacent owners"), in exchange for the adjacent owners' payment of 80% of the tax appraised value of the property to Defendant PALM BEACH COUNTY.

3. Subsequent to the filing of their Complaint, the Plaintiffs learned that certain of these adjacent owners who were granted "abandonment rights" and received resolutions as such from the Defendants, have filed such resolutions with the Palm Beach County Clerk. Accordingly, the Defendants have caused the resolutions to be accepted as "deeds" which are placed upon the tax roles of Palm Beach County. By causing these adjacent owners to be placed upon the tax roles, Palm Beach County effectively and implicitly designates the successful abandonment petitioners/adjacent owners as the record "title holders" and "owners" of the property strips in question. Accordingly, the Defendants are effectively conveying interests of public record to third party adjacent owners, for properties which the Plaintiffs are claiming to have exclusive right, title and interest in.

4. Accordingly, the Plaintiffs request leave to amend and supplement their Complaint with the following general allegations, or allegations to the following effect:

> "Pursuant to application of the 1986 ordinance in question, the Defendants have entertained and granted petitions for abandonment filed by property owners adjacent to the Plaintiffs' strips, in exchange

for payments of funds equal to eighty percent of the appraised value of said strips.

Following the granting of petitions for abandonment and acceptance of funds therefor, the Defendants caused the successful abandonment petitioners/adjacent owners to be placed on the state tax roles, suggesting and/or indicating in the public tax records that the adjacent owners are record title holders of the property strips owned by the Plaintiffs.

As a result of designations of the adjacent owners as record title holders, the application of the 1986 ordinance by the Defendants effects a confiscatory taking of the Plaintiffs' property to Plaintiffs' detriment, without just compensation, in violation of 42 U.S.C. Section 1983."

5. The Plaintiffs shall be able to more effectively present their confiscatory taking claims pursuant to Section 1983 if the above-described amendment to the Complaint is allowed, in order to allege and demonstrate with greater detail the damage caused by application of the 1986 ordinance enacted by Defendants.

MEMORANDUM OF LAW

Rule 15(a), Federal Rules of Civil Procedure, provides that following the service of the adverse party's responsive pleading, "a party may amend his pleading only by leave of court . . . and

leave shall be *freely* given when justice so requires." Rule 15(b) allows amendments in order to conform the pleadings to new evidence. "There is a *strong* policy embodied in the Federal Rules of Civil Procedure, and Rule 15 particularly, favoring the *liberality* of amendment." *Borden v. Florida East Coast,* 772 F.2d 750, 757 (11th Cir., 1985). It is favored for a district judge to permit a party to amend its complaint in order to conform with evidence acquired through discovery, even when close to trial. *Borden, supra.* An abuse of discretion will generally occur by denying leave to amend, where a plaintiff seeks an amendment following diligent discovery, and moves for leave to amend his complaint promptly upon discovering basis for new allegations. *Auster v. Stream,* 764 F.2d 381, 391 (5th Cir., 1985).

WHEREFORE, Plaintiffs respectfully request this Court to grant leave to file the proposed amendment to their Complaint incorporating new allegations derived from recent discoveries.

SMITH & WILLIAMS, P.A.

By: s/ Samuel R. Mandelbaum
SAMUEL R. MANDELBAUM, ESQUIRE
100 South Ashley Drive
Suite 1170
Tampa, Florida 33602
(813) 223-1068
ATTORNEYS FOR PLAINTIFFS

Appendix B

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail, to William J. Capito, Esquire, Assistant County Attorney, Post Office Box 1989, West Palm Beach, Florida 33402; Joan E. O'Dell, Attorney, 703 South Lake Drive, Lantana, Florida 33462; and Glenn J. Garrett, Esquire, of Spear & Deuschle, P.A., 800 S.E. 3rd Avenue, Ft. Lauderdale, Florida 33316, this 21 day of October, 1988.

s/ Samuel R. Mandelbaum
SAMUEL R. MANDELBAUM, ESQUIRE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA FILED DECEMBER 1, 1988

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-8111-CIV-GONZALEZ

WEST PENINSULA TITLE COMPANY, et al.,

Plaintiffs,

v.

PALM BEACH COUNTY, etc. et al.,

Defendants.

ORDER

THIS CAUSE has come before the court upon the plaintiffs' Motion For Leave To Amend Complaint. The court has considered the motion and, being otherwise duly advised, it is

ORDERED AND ADJUDGED that plaintiffs' Motion For Leave To Amend Complaint be and the same is hereby GRANTED pursuant to Rule (15a) of the Federal Rules of Civil Procedure. Plaintiffs' Complaint is hereby deemed AMENDED as per plaintiffs' motion.

DONE AND ORDERED in chambers at Fort Lauderdale, Florida, this 1st day of December, 1988.

s/ Jose A. Gonzalez, Jr.
UNITED STATES DISTRICT JUDGE
JOSE A. GONZALEZ, JR.

cc: all counsel